

BRYAN HEBERT  
CONFIDENTIAL TRANSCRIPT

6/17/2014

1 (Pages 1 to 4)

<p style="text-align: right;">1</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE SOUTHERN DISTRICT OF TEXAS 3 CORPUS CHRISTI DIVISION 4 MARC VEASEY, et al., ) 5 Plaintiff, ) 6 VS. ) CIVIL ACTION NUMBER: 7 RICK PERRY, et al., ) 2:13-CV-193 (NGR) 8 Defendants. ) 9 UNITED STATES OF AMERICA, ) 10 Plaintiff, ) 11 VS. ) CIVIL ACTION NUMBER: 12 TEXAS LEAGUE OF YOUNG VOTERS ) 2:13-CV-263 (NGR) 13 EDUCATION FUND, et al., ) 14 Plaintiff-Intervenors, ) 15 TEXAS ASSOCIATION OF HISPANIC ) 16 COUNTY JUDGES AND COUNTY ) 17 COMMISSIONERS, et al., ) 18 Plaintiff-Intervenors, ) 19 VS. ) 20 STATE OF TEXAS, et al., ) 21 Defendants. ) 22 TEXAS STATE CONFERENCE OF ) 23 NAACP BRANCHES, et al., ) 24 Plaintiffs, ) CIVIL ACTION NUMBER: 25 VS. ) 2:13-CV-291(NGR) 26 NANDITA BERRY, et al., ) 27 Defendants. )</p>	<p style="text-align: right;">3</p> <p>1 A P P E A R A N C E S 2 FOR THE UNITED STATES OF AMERICA: 3 Elizabeth Westfall 4 U.S. JUSTICE DEPARTMENT 5 CIVIL RIGHTS DIVISION 6 Room 7254 NWB 7 950 Pennsylvania Avenue, N.W. 8 Washington, D.C. 20530 9 (202) 514-0828 10 elizabeth.westfall@usdoj.gov 11 12 FOR THE NAMED DEFENDANTS RICK PERRY, ET AL.: 13 G. David Whitley 14 Assistant Deputy Attorney General 15 ATTORNEY GENERAL OF TEXAS 16 P.O. Box 12548 17 Austin, TX 78711-2548 18 (512) 475-3281 19 david.whitley@texasattorneygeneral.gov 20 21 FOR THE WITNESS: 22 Linda Halpern 23 Manager of Complex Litigation 24 ATTORNEY GENERAL OF TEXAS 25 P.O. Box 12548 26 Austin, TX 78711-2548 MC109 27 (512) 475-1969 28 linda.halpern@texasattorneygeneral.gov 29 30 Brooke Paup 31 Deputy Division Chief 32 Intergovernmental Relations Division 33 ATTORNEY GENERAL OF TEXAS 34 P.O. Box 12548 35 Austin, TX 78711-2548 36 (512) 936-1381 37 brooke.paup@oag.state.tx.us 38 FOR TEXAS LEAGUE OF YOUNG VOTERS' EDUCATION FUND: 39 Kelly P. Dunbar 40 WILMER HALE 41 1875 Pennsylvania Avenue, NW 42 Washington, DC 20006 43 (202) 663-6262</p>
<p style="text-align: right;">2</p> <p>1 BELINDA ORTIZ, et al., ) 2 Plaintiffs, ) 3 VS. ) CIVIL ACTION NUMBER: 4 STATE OF TEXAS, et al., ) 2:13-CV-348(NGR) 5 Defendants. ) 6 7 8 ***** 9 10 DEPOSITION OF 11 BRYAN HEBERT 12 JUNE 17, 2014 13 ***** 14 15 HIGHLY CONFIDENTIAL 16 17 ORAL DEPOSITION OF BRYAN HEBERT, produced as a 18 witness at the instance of the Plaintiff, was duly 19 sworn, was taken in the above-styled and numbered cause 20 on the JUNE 17, 2014 from 9:05 a.m. to 5:51 p.m., before 21 Chris Carpenter, CSR, in and for the State of Texas, 22 reported by machine shorthand, at the Office of the 23 Attorney General, 209 West 14th Street, Austin, TX 24 78701, pursuant to the Federal Rules of Civil Procedure 25 and the provisions stated on the record or attached hereto.</p>	<p style="text-align: right;">4</p> <p>1 FOR THIRD-PARTY LEGISLATORS: 2 Arthur D'Andrea 3 Assistant Solicitor General 4 ATTORNEY GENERAL OF TEXAS 5 P.O. Box 12548 6 Austin, TX 78711-2548 7 (512) 936-2868 8 arthur.dandrea@oag.state.tx.us</p>

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<p style="text-align: right;">13</p> <p>1 e-mail and your official state or e-mail run through the 2 Lieutenant Governor's Office. Do you see that in the 3 instructions?</p> <p>4 MS. HALPERN: Can you give us a number, 5 Counsel?</p> <p>6 MS. WESTFALL: If you turn to Exhibit A on 7 Page 2 of Paragraph 8.</p> <p>8 Q. (By Ms. Westfall) Do you see that the 9 instructions direct you to look at your personal e-mail 10 as well as your work e-mail --</p> <p>11 A. Yes.</p> <p>12 Q. -- for responsive e-mails?</p> <p>13 A. Yes.</p> <p>14 Q. Did you do that?</p> <p>15 A. Yes.</p> <p>16 Q. How does the Lieutenant Governor communicate 17 with his constituents?</p> <p>18 A. Typically, correspondence from constituents 19 comes into our office in the form of an e-mail or a 20 letter, and we reply in a similar manner.</p> <p>21 Q. Does he have an e-mail newsletter?</p> <p>22 A. I'm not sure. I don't think so.</p> <p>23 Q. Does he have a mailing list that he sends 24 letters to?</p> <p>25 A. I'm not sure.</p>	<p style="text-align: right;">15</p> <p>1 states?</p> <p>2 A. No.</p> <p>3 Q. And you were first hired -- I'm going to try to 4 lead you through some of your background so we can get 5 through this quickly since we've already covered that in 6 a prior deposition. You were first hired as counsel for 7 public policy for Mr. Dewhurst in 2007; is that right?</p> <p>8 A. Correct.</p> <p>9 Q. You were promoted to Deputy General Counsel in 10 2008 or 2009; is that correct?</p> <p>11 A. Correct.</p> <p>12 Q. Which year was that you were promoted?</p> <p>13 A. 2009 -- wait -- yes, I'd say 2009.</p> <p>14 Q. Did your responsibilities as Deputy General 15 Counsel include providing opinions on law to the 16 Lieutenant Governor?</p> <p>17 A. Yes.</p> <p>18 Q. What were the circumstances under which that 19 occurred?</p> <p>20 A. Analyzing legislation, reviewing open records 21 requests, and whatever questions he might have about any 22 legal matter.</p> <p>23 Q. Can you think of any other instances when you 24 provided him with legal advice?</p> <p>25 MS. HALPERN: Let me caution you not to</p>
<p style="text-align: right;">14</p> <p>1 Q. Did you prepare for today's deposition?</p> <p>2 A. Yes.</p> <p>3 Q. How did you prepare?</p> <p>4 A. I reviewed my transcript of my deposition last 5 time. I met with counsel, and I just be sort of checked 6 to see if there were any current developments related to 7 implementation of Voter ID.</p> <p>8 Q. When you met with counsel, was anyone else 9 present?</p> <p>10 A. No.</p> <p>11 Q. Did you review any documents at that meeting 12 with counsel?</p> <p>13 A. Other than -- yes, copies of the bills, and my 14 transcript from last time.</p> <p>15 Q. Anything else?</p> <p>16 A. No.</p> <p>17 Q. Other than your attorney, have you spoken to 18 anyone about your deposition today?</p> <p>19 A. No.</p> <p>20 Q. Did you bring any notes or documents with you 21 today?</p> <p>22 A. No.</p> <p>23 Q. Are you still a member of the Texas bar?</p> <p>24 A. Yes.</p> <p>25 Q. Are you licensed to practice law in other</p>	<p style="text-align: right;">16</p> <p>1 reveal any attorney-client confidences in answering that 2 question.</p> <p>3 Q. (By Ms. Westfall) And just to clarify, I'm 4 only asking for categories of communications, not the 5 substance thereof.</p> <p>6 A. I think those broad categories cover it.</p> <p>7 Q. Did your responsibilities as Deputy General 8 Counsel include providing assistance to the Lieutenant 9 Governor in any legal proceedings?</p> <p>10 A. I -- I do not recall. I do not think so.</p> <p>11 Q. Did your responsibilities as Deputy General 12 Counsel include providing professional legal services 13 unrelated to policy choices or political considerations?</p> <p>14 A. Can you just repeat that?</p> <p>15 Q. Sure. Did your responsibilities as Deputy 16 General Counsel include providing professional legal 17 services unrelated to policy or political 18 considerations?</p> <p>19 A. I mean, to the extent the Lieutenant Governor 20 does things like communicate with constituents or 21 receive open records requests or procedural matters 22 within the Senate, yes, but for the most part, it was 23 all under an umbrella of legal advice.</p> <p>24 Q. And you served as Deputy General Counsel until 25 January 2012?</p>

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<p style="text-align: right;">17</p> <p>1 <b>A. Correct.</b></p> <p>2 <b>Q. During the five-year period that you served as</b></p> <p>3 <b>Mr. Dewhurst's deputy general counsel, you were the</b></p> <p>4 <b>point person for the Secretary of State's office; is</b></p> <p>5 <b>that right?</b></p> <p>6 <b>A. Correct.</b></p> <p>7 <b>Q. Fair to say you're quite familiar with the</b></p> <p>8 <b>Texas election code?</b></p> <p>9 <b>A. Correct.</b></p> <p>10 <b>Q. You became employed somewhere else in January</b></p> <p>11 <b>2012?</b></p> <p>12 <b>A. Yes.</b></p> <p>13 <b>Q. Where was that?</b></p> <p>14 <b>A. I was an independent political consultant, and</b></p> <p>15 <b>I had clients and was in the process of forming a</b></p> <p>16 <b>partnership.</b></p> <p>17 <b>Q. You served -- did you serve as the executive</b></p> <p>18 <b>director for the Texas Conservative Roundtable?</b></p> <p>19 <b>A. I did.</b></p> <p>20 <b>Q. Was that a client or was that a paid employment</b></p> <p>21 <b>position?</b></p> <p>22 <b>A. Client.</b></p> <p>23 <b>Q. While you were consulting in 2012, did you ever</b></p> <p>24 <b>provide any advice to a campaign candidate or political</b></p> <p>25 <b>party?</b></p>	<p style="text-align: right;">19</p> <p>1 counsel?</p> <p>2 <b>A. Overseeing the legal staff, providing legal</b></p> <p>3 <b>counsel to the Lieutenant Governor and staff, answering</b></p> <p>4 <b>open records requests, serving as public information</b></p> <p>5 <b>officer for our office, assorted other legal issues.</b></p> <p>6 <b>Q. Are you still the point person for the</b></p> <p>7 <b>Secretary of State's Office or is someone else handling</b></p> <p>8 <b>those responsibilities?</b></p> <p>9 <b>A. Someone else.</b></p> <p>10 <b>Q. Who is that person?</b></p> <p>11 <b>A. Constance Allison.</b></p> <p>12 <b>Q. Has that person -- how long has Constance</b></p> <p>13 <b>Allison been employed with Mr. Dewhurst?</b></p> <p>14 <b>A. I believe she started when I did, which would</b></p> <p>15 <b>be October or so, 2012.</b></p> <p>16 <b>Q. Is she involved in any way in implementation of</b></p> <p>17 <b>SB 14?</b></p> <p>18 <b>A. Not that I know of.</b></p> <p>19 <b>Q. Who is the point person for the Department of</b></p> <p>20 <b>Public Safety in your office?</b></p> <p>21 <b>A. I think currently that position is open, and so</b></p> <p>22 <b>I imagine our acting chief of -- acting chief of staff</b></p> <p>23 <b>would handle those requests.</b></p> <p>24 <b>Q. Who is that person?</b></p> <p>25 <b>A. John Opperman.</b></p>
<p style="text-align: right;">18</p> <p>1 <b>A. No.</b></p> <p>2 <b>Q. And what happened to your efforts to enter into</b></p> <p>3 <b>a partnership?</b></p> <p>4 <b>A. Before we could finish, I was given a great</b></p> <p>5 <b>offer to return to the capital when my boss was</b></p> <p>6 <b>remaining as Lieutenant Governor.</b></p> <p>7 <b>Q. So was there a time when Mr. Dewhurst rehired</b></p> <p>8 <b>you?</b></p> <p>9 <b>A. Yes.</b></p> <p>10 <b>Q. When was that?</b></p> <p>11 <b>A. That was in October of 2012.</b></p> <p>12 <b>Q. What position did he hire you for?</b></p> <p>13 <b>A. General counsel.</b></p> <p>14 <b>Q. How did that opportunity arise?</b></p> <p>15 <b>A. He unexpectedly was given the opportunity to</b></p> <p>16 <b>remain Lieutenant Governor, and his general counsel at</b></p> <p>17 <b>the time left to take another position. And he had an</b></p> <p>18 <b>opening, and his chief of staff reached out to me and</b></p> <p>19 <b>offered me the position.</b></p> <p>20 <b>Q. Who was his chief of staff at that time?</b></p> <p>21 <b>A. Blaine Brunson.</b></p> <p>22 <b>Q. What are your responsibilities? Do you</b></p> <p>23 <b>currently still hold that position?</b></p> <p>24 <b>A. I do.</b></p> <p>25 <b>Q. What are your responsibilities as general</b></p>	<p style="text-align: right;">20</p> <p>1 <b>Q. Do you handle communications with the</b></p> <p>2 <b>Department of Public Safety in any way right now for the</b></p> <p>3 <b>Lieutenant Governor?</b></p> <p>4 <b>A. To the extent that DPS is involved with Voter</b></p> <p>5 <b>ID, I have communicated with them.</b></p> <p>6 <b>Q. And when have those communications occurred?</b></p> <p>7 <b>A. Maybe only during 2013, a couple of e-mails.</b></p> <p>8 <b>Q. What were the e-mails about?</b></p> <p>9 <b>A. They were inquiries from me about efforts to</b></p> <p>10 <b>implement distribution of identification.</b></p> <p>11 <b>Q. Were these e-mails around the fall, early fall</b></p> <p>12 <b>of 2013?</b></p> <p>13 <b>A. I can't recall.</b></p> <p>14 <b>Q. And what did you learn as a result of your</b></p> <p>15 <b>e-mail communication with DPS?</b></p> <p>16 <b>A. I learned that DPS -- I think I -- from this</b></p> <p>17 <b>e-mail, I learned that DPS was increasing their office</b></p> <p>18 <b>hours in certain locations. They were implementing</b></p> <p>19 <b>mobile unit efforts. They were pursuing an education</b></p> <p>20 <b>initiative. There may have been more, but I think</b></p> <p>21 <b>that's right.</b></p> <p>22 <b>Q. What prompted you to initiate these</b></p> <p>23 <b>conversations?</b></p> <p>24 <b>A. I met with some constituents who asked about</b></p> <p>25 <b>state efforts to implement the program.</b></p>

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<p style="text-align: right;">21</p> <p>1 Q. Who were the constituents?</p> <p>2 <b>A. I don't remember their individual names, but</b></p> <p>3 <b>the organization, I believe, was called True the Vote.</b></p> <p>4 Q. And so you were following up on -- on</p> <p>5 meetings -- meetings that you had with these</p> <p>6 constituents and seeking a status update from DPS as to</p> <p>7 how they were implementing the EICs; is that correct?</p> <p>8 <b>A. Correct.</b></p> <p>9 <b>Q. Have you had any communications with DPS</b></p> <p>10 <b>subsequent to those e-mail communications in 2013?</b></p> <p>11 <b>A. I don't think so.</b></p> <p>12 Q. Do you have any reason to know whether DPS has</p> <p>13 in fact undertaken the activities you've just testified</p> <p>14 to?</p> <p>15 <b>A. I've seen news accounts to that effect, so yes.</b></p> <p>16 Q. Where were the news accounts?</p> <p>17 <b>A. We at the Capitol every day, we get a list of</b></p> <p>18 <b>legislative and newspaper clippings from across the</b></p> <p>19 <b>state and across -- reading those every day, I've --</b></p> <p>20 <b>I've seen various accounts.</b></p> <p>21 Q. And the accounts said what?</p> <p>22 <b>A. They said that -- what I mentioned earlier,</b></p> <p>23 <b>that there were efforts through local media to publicize</b></p> <p>24 <b>extended hours, the mobile units, et cetera.</b></p> <p>25 Q. So you have not had any communications directly</p>	<p style="text-align: right;">23</p> <p>1 Q. How did you in your own mind decide when you</p> <p>2 would run things by Mr. Battle for review?</p> <p>3 <b>A. I can't say, just a case-by-case basis.</b></p> <p>4 Q. Would you typically run draft e-mails by him</p> <p>5 before you sent them to other staff for the Senate?</p> <p>6 <b>A. I may have, but not every time.</b></p> <p>7 Q. And if you did a memo or talking points or</p> <p>8 something more substantive, would you tend to run those</p> <p>9 by Mr. Battle before you sent them out?</p> <p>10 <b>A. Again, maybe, it would depend on the specific</b></p> <p>11 <b>item.</b></p> <p>12 Q. Were there any rules or guidelines that</p> <p>13 Mr. Battle presented you with or that were understood as</p> <p>14 to when you could or could not circulate written work</p> <p>15 product outside of the office?</p> <p>16 <b>A. I don't think so.</b></p> <p>17 Q. Did anyone else in the office beside Mr. Battle</p> <p>18 review your written work product before it went out if</p> <p>19 you decided to run it by somebody?</p> <p>20 <b>A. Possibly Julia Rathgeber, our policy director</b></p> <p>21 <b>or legislative director, I forget her title.</b></p> <p>22 Q. Anybody else?</p> <p>23 <b>A. Possibly our chief of staff, who in 2009 would</b></p> <p>24 <b>have been Rob Johnson.</b></p> <p>25 Q. Did Mr. Dewhurst ever review any of your drafts</p>
<p style="text-align: right;">22</p> <p>1 with DPS since those e-mail communications in 2013; is</p> <p>2 that correct?</p> <p>3 <b>A. I think that's correct.</b></p> <p>4 <b>Q. Has anyone, to your knowledge, in your office,</b></p> <p>5 <b>had any communications with DPS since the fall of 2013?</b></p> <p>6 <b>A. Not that I'm aware. I assume someone has, but</b></p> <p>7 <b>not relating to Voter ID.</b></p> <p>8 Q. During the 2009 legislative session, which I</p> <p>9 guess was the 81st Session, who did you report to?</p> <p>10 <b>A. 2009, I would have been deputy general counsel</b></p> <p>11 <b>and would have reported to Frank Battle.</b></p> <p>12 Q. Did Mr. Battle review drafts of --</p> <p>13 <b>A. I'm sorry. It was either Frank Battle or</b></p> <p>14 <b>Spencer Reid, whoever was the general counsel, and I'm</b></p> <p>15 <b>forgetting when Spencer left.</b></p> <p>16 Q. Did Mr. Battle or Mr. Spencer review drafts of</p> <p>17 your work product before they were circulated outside of</p> <p>18 your office?</p> <p>19 <b>A. Sometimes.</b></p> <p>20 Q. When would those circumstances arise?</p> <p>21 <b>A. It -- I mean, some memos, I thought Frank or</b></p> <p>22 <b>Spencer had, you know, some -- that they either needed</b></p> <p>23 <b>to see it or it would be useful for them to see it, but</b></p> <p>24 <b>not every memo or brief was sent through them for</b></p> <p>25 <b>review.</b></p>	<p style="text-align: right;">24</p> <p>1 before they went out?</p> <p>2 <b>A. Not that I recall.</b></p> <p>3 Q. Never, not once?</p> <p>4 <b>A. Not that I recall. There, again, there may</b></p> <p>5 <b>have been some particular memo, and I guess it depends</b></p> <p>6 <b>on who the intended audience would be, but not that I'm</b></p> <p>7 <b>recalling now.</b></p> <p>8 <b>Q. Did you ever prepare memos from Mr. Dewhurst</b></p> <p>9 <b>that were also -- that you also subsequently shared with</b></p> <p>10 <b>the staff in the Senate?</b></p> <p>11 <b>A. I may have shared memos with both Lieutenant</b></p> <p>12 <b>Governor Dewhurst and other staff.</b></p> <p>13 Q. Did any of those involve photo ID?</p> <p>14 <b>A. Probably.</b></p> <p>15 Q. Do you recall which ones you shared with both</p> <p>16 Mr. Dewhurst and staff?</p> <p>17 <b>A. I do not.</b></p> <p>18 Q. Do you recall drafting talking points about the</p> <p>19 bills, any of the bills that you shared with both</p> <p>20 Mr. Dewhurst and other staff?</p> <p>21 <b>A. I probably did. I think drafting talking</b></p> <p>22 <b>points and substantive sort of white papers is pretty</b></p> <p>23 <b>common.</b></p> <p>24 Q. And they would be shared with both Mr. Dewhurst</p> <p>25 and other staff concurrently or sequentially?</p>

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<p style="text-align: right;">25</p> <p>1 <b>A. They may have been.</b></p> <p>2 Q. During the 2011 82nd Session, who did you</p> <p>3 report to?</p> <p>4 <b>A. 2011, I reported to Frank Battle, the general</b></p> <p>5 <b>counsel.</b></p> <p>6 Q. And you're confident that that was the person</p> <p>7 you reported to?</p> <p>8 <b>A. It was definitely Frank.</b></p> <p>9 Q. Closer in time, easier to remember. Did</p> <p>10 Mr. Battle have a similar kind of review process for</p> <p>11 your written work product --</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. -- that you just testified to in 2009?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Thank you. And I think I asked you this before</p> <p>16 a little differently but you -- were you involved in any</p> <p>17 capacity in any of Mr. Dewhurst's campaigns?</p> <p>18 <b>A. No.</b></p> <p>19 MS. HALPERN: Objection, asked and</p> <p>20 answered.</p> <p>21 Q. (By Ms. Westfall) Were you involved -- did you</p> <p>22 have any advisory in or any informal role, unpaid role,</p> <p>23 in any campaign?</p> <p>24 <b>A. No.</b></p> <p>25 Q. Did the campaign staff consult with you on</p>	<p style="text-align: right;">27</p> <p>1 <b>individual legislators.</b></p> <p>2 Q. Do you recall that a bill advanced that was</p> <p>3 called SB 362?</p> <p>4 <b>A. Again, I'm not clear on the number and what was</b></p> <p>5 <b>in that bill.</b></p> <p>6 Q. Do you know where there was support in the</p> <p>7 Legislature for Voter ID in 2009?</p> <p>8 MS. HALPERN: Calls for speculation.</p> <p>9 <b>A. Probably lots of reasons.</b></p> <p>10 Q. (By Ms. Westfall) Can you tell me what the</p> <p>11 reasons were?</p> <p>12 MS. HALPERN: Objection, calls for</p> <p>13 speculation.</p> <p>14 Q. (By Ms. Westfall) You may answer.</p> <p>15 <b>A. The reasons why there was support for passing</b></p> <p>16 <b>Voter ID?</b></p> <p>17 Q. In the Legislature, yes?</p> <p>18 <b>A. I imagine that people wanted to stop voter</b></p> <p>19 <b>fraud and increase the security of the elections,</b></p> <p>20 <b>increase voter confidence. I'm sure there are other</b></p> <p>21 <b>reasons and probably unique to each member that</b></p> <p>22 <b>supported the bill.</b></p> <p>23 Q. Are you aware of any facts that supported the</p> <p>24 decision to push forward with Voter ID in 2009?</p> <p>25 MS. HALPERN: Objection, vague.</p>
<p style="text-align: right;">26</p> <p>1 anything ever?</p> <p>2 <b>A. I'm sure -- I mean, I know people on his</b></p> <p>3 <b>campaign. I'm sure I talked about the campaign and how</b></p> <p>4 <b>it was going, but I'm not remembering any specific</b></p> <p>5 <b>instance of any sort of consultation.</b></p> <p>6 Q. Did Texas -- did the Texas Legislature consider</p> <p>7 a Voter ID bill in 2007?</p> <p>8 <b>A. I believe yes.</b></p> <p>9 Q. Was that bill HB 218?</p> <p>10 <b>A. I -- I get the numbers and the years confused.</b></p> <p>11 <b>If you had a copy to double-check, I could be certain.</b></p> <p>12 Q. And was -- rather than marking another exhibit,</p> <p>13 was any Voter ID bill passed, enacted in 2007?</p> <p>14 <b>A. I don't believe so.</b></p> <p>15 Q. And was there support in the Legislature for</p> <p>16 advancing a Voter ID bill in the following legislative</p> <p>17 session?</p> <p>18 <b>A. In 2009?</b></p> <p>19 Q. Yes.</p> <p>20 <b>A. Regular session, I believe a bill was filed,</b></p> <p>21 <b>and I do not believe a bill finally passed.</b></p> <p>22 Q. Do you recall whether any particular members</p> <p>23 expressed support for advancing a Voter ID bill in 2009?</p> <p>24 <b>A. I don't remember particular members, no. I</b></p> <p>25 <b>mean, obviously, the bill sponsors, but I can't remember</b></p>	<p style="text-align: right;">28</p> <p>1 <b>A. Again, I'm not --</b></p> <p>2 Q. (By Ms. Westfall) Any factual support for a</p> <p>3 need for Voter ID that you're aware of?</p> <p>4 <b>A. Meaning the existence of fraud?</b></p> <p>5 Q. Yes.</p> <p>6 <b>A. I think, yes, my recollection is that there was</b></p> <p>7 <b>evidence of fraud in the elections in Texas as there is</b></p> <p>8 <b>in, I assume, elections of every jurisdiction.</b></p> <p>9 Q. Are you aware of any reasons for supporting</p> <p>10 Voter ID in 2009 that were not in the public record?</p> <p>11 MS. HALPERN: Objection, vague, calls for</p> <p>12 speculation.</p> <p>13 Q. (By Ms. Westfall) You may answer.</p> <p>14 <b>A. Reasons to support the bill were not in the</b></p> <p>15 <b>public record? I'm not aware of any.</b></p> <p>16 Q. Were there any constituencies in 2009 that</p> <p>17 wanted Voter ID?</p> <p>18 <b>A. Constituencies of the public or in the</b></p> <p>19 <b>Legislature?</b></p> <p>20 Q. Of the public?</p> <p>21 <b>A. That wanted Voter ID? I mean, I think there</b></p> <p>22 <b>are public opinion polls that show a pretty large</b></p> <p>23 <b>majorities of the public supported the concept of Voter</b></p> <p>24 <b>ID.</b></p> <p>25 Q. Putting aside polling, are you aware of</p>

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<p style="text-align: right;">29</p> <p>1 constituencies in the public in 2009 that were 2 supporting and pushing the Legislature to enact Voter 3 ID? 4 <b>A. I don't know that they could be grouped into 5 constituencies except to the extent that they are 6 constituents who would like voter fraud reform or 7 improved voting security.</b> 8 Q. Were there particular groups or organizations 9 that supported that cause in 2009? 10 <b>A. I don't recall specific names of groups.</b> 11 Q. Were there any individuals or groups that 12 contacted Mr. Dewhurst to express their support for 13 Voter ID in 2009? 14 <b>A. I would have to look at, you know, old 15 communications. I don't recall the names of specific 16 groups.</b> 17 <b>Q. Did Mr. Dewhurst himself support advancing 18 Voter ID in 2009?</b> 19 <b>A. My memory is his public statements were, yes, 20 he supported Voter ID.</b> 21 Q. Why did he want to advance a Voter ID bill in 22 2009? 23 <b>A. Again, he probably has his own --</b> 24 MS. HALPERN: Let me caution you not to 25 reveal any attorney-client confidences in answering this</p>	<p style="text-align: right;">31</p> <p>1 think deliberative process applies. I think your 2 objection is not well-founded. I ask that you withdraw 3 it. 4 MS. HALPERN: I'm not withdrawing it, 5 Counsel. 6 Q. (By Ms. Westfall) Again, why did Mr. Dewhurst 7 want to advance Voter ID in the 2009 Legislative 8 session? 9 MS. HALPERN: You may answer as long as 10 you don't reveal any confidence or communications you 11 had with the Lieutenant Governor. Anything that was on 12 the public record you're free to reference. 13 MS. WESTFALL: What is the privilege 14 you're asserting on? 15 MS. HALPERN: In this case, it is 16 Lieutenant Governor Dewhurst's deliberative process 17 privilege and his legislative privilege. 18 Q. (By Ms. Westfall) You can answer. 19 <b>A. Again, my memory is his public statements have 20 been consistent that he wants secure elections, to deter 21 fraud, to make sure that ineligible voters are not 22 casting votes.</b> 23 Q. To be clear, for the record, are you 24 withholding any -- any testimony on the basis of your 25 counsel's advice not to testify on the basis of</p>
<p style="text-align: right;">30</p> <p>1 question. To the extent that you're able to answer the 2 question without doing so, go ahead. 3 <b>A. Again, I think his public statements were -- 4 reflected the fact that he was concerned about voter 5 fraud and securing Texas elections and making sure that, 6 you know, eligible voters were able to cast votes in 7 secure elections.</b> 8 MS. WESTFALL: And I'll object to that 9 objection to the extent that this is asking for policy 10 communications, not legal advice. 11 Q. (By Ms. Westfall) So did you answer fully or 12 was any of that withheld on the basis of purported 13 attorney-client privilege? 14 MS. HALPERN: Well, then, let me renew a 15 different objection, Counsel, on this, the deliberative 16 process objection. This witness is testifying as to his 17 opinions and his beliefs, which you're now asking him to 18 reveal the opinions or beliefs of others in the 19 Legislature and that violates their deliberative process 20 privilege. You may ask these questions of them, but I'm 21 going to object and direct him not to answer with 22 respect to the opinions of others. 23 MS. WESTFALL: Well, I think with regard 24 to deliberative process, I'm asking about Mr. Dewhurst's 25 roles and responsibilities as a legislator, so I don't</p>	<p style="text-align: right;">32</p> <p>1 deliberative process or legislative privilege? 2 MS. HALPERN: And let me add attorney- 3 client at this point, as well, since he was in the 4 position of deputy general counsel to the Lieutenant 5 Governor. 6 Q. (By Ms. Westfall) Are you withholding any 7 testimony on the basis of those instructions? 8 <b>A. No.</b> 9 Q. Were there any problems that Mr. Dewhurst was 10 trying to fix in 2009 with the Voter ID legislation? 11 <b>A. Well, again, the bill was sponsored by I think 12 Senator Fraser, and you would have to ask him his 13 specific problems that he was trying to fix. The bill 14 as filed, again, I think was supported by the Lieutenant 15 Governor and other supporters.</b> 16 Q. Were there particular constituencies that 17 Mr. Dewhurst was responding to in supporting Voter ID in 18 2009? 19 <b>A. Again, you would have to ask him. I believe, 20 you know, again, that there was a broad range of people 21 who supported the bill.</b> 22 Q. So in answer to my question, there were not 23 particular constituencies to -- 24 <b>A. I -- I'm don't --</b> 25 Q. -- your knowledge that he was responding to?</p>



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<p style="text-align: right;">33</p> <p>1 <b>A. I'm not aware of particular constituencies.</b></p> <p>2 Q. Are you aware of any facts, any facts on the</p> <p>3 ground that supported Mr. Dewhurst's support for Voter</p> <p>4 ID in 2009?</p> <p>5 <b>A. I recall accounts of voter fraud that were laid</b></p> <p>6 <b>out in various stages of the bill debate, and again, as</b></p> <p>7 <b>fraud exists in most elections, jurisdictions, at some</b></p> <p>8 <b>point, at some level.</b></p> <p>9 Q. And this is the -- the fraud you're referring</p> <p>10 to is all within the -- in public debate in 2009; is</p> <p>11 that correct?</p> <p>12 <b>A. There was a lot of references to fraud, and I</b></p> <p>13 <b>should add, also, I guess, incomplete or inaccurate</b></p> <p>14 <b>voter roles, other problems within the election process,</b></p> <p>15 <b>correct.</b></p> <p>16 Q. Was Voter ID part of Mr. Dewhurst's legislative</p> <p>17 agenda for 2009?</p> <p>18 <b>A. I'm not sure what you mean by agenda. I think</b></p> <p>19 <b>it's fair to say he supported the Voter ID bill.</b></p> <p>20 Q. Was the Voter ID bill filed in December 2008?</p> <p>21 <b>A. I don't remember the date it was filed. I know</b></p> <p>22 <b>that bills can be filed beginning in November before</b></p> <p>23 <b>each session.</b></p> <p>24 MS. WESTFALL: Could you mark this is as</p> <p>25 150?</p>	<p style="text-align: right;">35</p> <p>1 <b>don't recall specific communications.</b></p> <p>2 Q. And were you involved yourself in the</p> <p>3 development of Senate Bill 362?</p> <p>4 <b>A. Again, I know I, on behalf of my boss, was in</b></p> <p>5 <b>charge of sort of tracking and analyzing election</b></p> <p>6 <b>legislation including Voter ID. I cannot recall</b></p> <p>7 <b>specific communications on the development of Senate</b></p> <p>8 <b>Bill 362. That was five years ago.</b></p> <p>9 Q. Were you involved in the drafting itself of</p> <p>10 Senate Bill 362?</p> <p>11 <b>A. Again, I can't recall specific instances of</b></p> <p>12 <b>drafting language in the bill.</b></p> <p>13 Q. I believe you testified in your previous</p> <p>14 deposition that Jennifer Fagan from the State Affairs</p> <p>15 Committee was involved in drafting. Does that sound</p> <p>16 correct?</p> <p>17 <b>A. That's probably right.</b></p> <p>18 Q. And Janice McCoy from Senator Fraser's was --</p> <p>19 Senator Fraser's was involved in the drafting; is that</p> <p>20 correct?</p> <p>21 <b>A. That's probably right.</b></p> <p>22 Q. While drafting Senate Bill 362, do you recall</p> <p>23 discussing any particular provisions of the bill?</p> <p>24 MS. HALPERN: Objection, assumes facts not</p> <p>25 in evidence.</p>
<p style="text-align: right;">34</p> <p>1 (Exhibit 150 marked for identification.)</p> <p>2 Q. (By Ms. Westfall) You've been handed what's</p> <p>3 been marked as Exhibit 150. Do you recognize this</p> <p>4 document?</p> <p>5 <b>A. (Witness looking at document.)</b></p> <p>6 MS. WESTFALL: Could you mark this too?</p> <p>7 (Exhibit 151 marked for identification.)</p> <p>8 Q. (By Ms. Westfall) You've also been handed</p> <p>9 Exhibit 151.</p> <p>10 <b>A. This looks like Senate Bill 362.</b></p> <p>11 Q. Was this the bill you were just referring to</p> <p>12 introduced by Senator Fraser?</p> <p>13 <b>A. Senator Fraser is a sponsor. I don't know at</b></p> <p>14 <b>what stage in the legislative process this version</b></p> <p>15 <b>reflects.</b></p> <p>16 Q. Who developed Senate Bill 362?</p> <p>17 <b>A. I believe Senator Fraser and his staff with</b></p> <p>18 <b>input from other staff, others.</b></p> <p>19 Q. Were you also involved yourself?</p> <p>20 <b>A. I -- I'm sure I was. I can't remember to what</b></p> <p>21 <b>extent. 2009? Right, I can't remember as to what</b></p> <p>22 <b>extent I was involved.</b></p> <p>23 Q. Do you recall any communications that occurred</p> <p>24 before SB 362 was filed related to its development?</p> <p>25 <b>A. I don't recall any. There may have been, but I</b></p>	<p style="text-align: right;">36</p> <p>1 <b>A. So the question is while drafting?</b></p> <p>2 Q. (By Ms. Westfall) While you were involved in</p> <p>3 participating in the drafting process, do you recall any</p> <p>4 discussions about any particular provisions of the bill?</p> <p>5 <b>A. I don't recall particular discussions about</b></p> <p>6 <b>particular provisions.</b></p> <p>7 Q. Do you recall that Senate Bill 362 allowed the</p> <p>8 use of both photo and nonphoto ID by voters?</p> <p>9 <b>A. Looking at the bill in front of me, I can see</b></p> <p>10 <b>that it does.</b></p> <p>11 Q. Do you recall any discussions about the choice</p> <p>12 to include that range of acceptable documents in the</p> <p>13 bill?</p> <p>14 <b>A. I don't recall specific conversations.</b></p> <p>15 Q. Do you recall any discussion about the</p> <p>16 provision related to provisional ballots in Senate Bill</p> <p>17 362?</p> <p>18 <b>A. I don't recall.</b></p> <p>19 Q. Turning your attention back to Exhibit 150,</p> <p>20 what forms, generally, of Voter ID are permitted by</p> <p>21 Senate Bill 362?</p> <p>22 <b>A. What forms of ID?</b></p> <p>23 Q. Of ID, yes. And let me see if I can turn your</p> <p>24 attention to page 5 and 6 of the bill.</p> <p>25 <b>A. Senate Bill 362. It looks like acceptable</b></p>

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<p style="text-align: right;">37</p> <p>1 forms of photo identification are a driver's license or 2 personal ID card issued by DPS, a United States military 3 ID card, a United States citizenship certificate, United 4 States passport, and a concealed handgun license issued 5 by DPS, and a valid identification card with a 6 photograph issued by the federal or state government. 7 And then there's a list of additional acceptable proof: 8 their voter registration certificate or a copy of 9 utility bill, bank statement, government check, 10 paycheck, other government documents. Official mail 11 from the government. Certified birth certificate, U.S. 12 citizenship papers, marriage license or divorce decree, 13 adoption, name change or sex change records. Public 14 benefit cards, temporary driving permits, pilot license, 15 library card, hunting or fishing license. 16 Q. So would you describe this as a very broad set 17 of IDs? 18 A. It seems to be a broad set of IDs. 19 Q. Do you recall that in your previous deposition 20 you testified that you had several conversations with 21 Ms. Fagan and Ms. McCoy about the forms of ID to include 22 in Senate Bill 362? 23 A. I remember -- is the question do I recall from 24 my deposition? 25 Q. Do you recall that you testified to that fact</p>	<p style="text-align: right;">39</p> <p>1 witness, if this involves attorney-client 2 communications, do not reveal them. And to the extent 3 that you are being asked about his thoughts and 4 impressions, I'm going to direct you not to answer on 5 the basis of that would waive his legislative privilege. 6 You can waive your own. You can't waive somebody 7 else's. You can ask those questions of him. 8 MS. WESTFALL: I object to your objection. 9 Mr. Hebert only has legislative privilege and can assert 10 that on the basis of Mr. Dewhurst's legislative 11 privilege, which we take strong issue with in this 12 litigation, but it is not his privilege to -- it is not 13 his personal privilege, so I ask that you were withdraw 14 that objection because -- 15 MS. HALPERN: On the contrary, then he 16 can't answer your question at all. We're trying to be 17 cooperative here, and I'm allowing you to ask him 18 questions as to his thoughts and opinions. But you're 19 right, the privilege belongs to Lieutenant Governor 20 Dewhurst, as well, and he cannot answer questions about 21 Lieutenant Governor Dewhurst's thoughts and impressions, 22 because that would waive somebody else's -- that would 23 waive the deliberative process privilege of Lieutenant 24 Governor Dewhurst. He's free to waive that himself, but 25 this witness is not free to waive it for him.</p>
<p style="text-align: right;">38</p> <p>1 in your deposition? 2 A. I don't recall that specific time -- 3 Q. Do you recall that you in fact had several 4 conversations with Ms. Fagan and Ms. McCoy about the 5 forms of ID to include? 6 A. I recall having conversations with Ms. McCoy 7 and Ms. Fagan about Voter ID, but I don't recall the 8 nature of those five years after and two years after my 9 last deposition. 10 Q. Was Mr. Dewhurst involved in any of these 11 discussions? 12 A. Not that I recall. 13 Q. Was he involved in any discussion about what 14 forms of ID to include in Senate Bill 362? 15 A. Not that I recall, and I don't know what 16 conversations he may have had with other people. 17 Q. Yeah, I'm just asking you -- 18 A. Sure. 19 Q. -- to talk about things in your knowledge -- 20 A. Sure. 21 Q. -- obviously, thank you. 22 Do you know what -- what forms of ID 23 Mr. Dewhurst thought should be included in Senate Bill 24 362? 25 MS. HALPERN: Objection, and direct the</p>	<p style="text-align: right;">40</p> <p>1 MS. WESTFALL: Is that the sole privilege 2 you're asserting with regard to my question about 3 Mr. Dewhurst's opinions as to which forms of ID should 4 be included in this legislation? Is it only 5 deliberative process? 6 MS. HALPERN: Actually, that was 7 legislative privilege. 8 MS. WESTFALL: And to be clear, you're not 9 asserting deliberative process with regard to his 10 testimony I'm seeking to elicit on views of Mr. Dewhurst 11 with regard to ID and legislation; is that correct? 12 MS. HALPERN: It would depend whether it 13 was -- it would depend whether it was a final opinion or 14 not. If it's an evolving opinion, then it's 15 deliberative process privilege. If it's a final opinion 16 that was expressed in some way, then I guess the 17 decision has been reached. 18 MS. WESTFALL: So just so the record is 19 clear, you're asserting both deliberative process and 20 legislative privilege with regard to the testimony in 21 response to the question I just asked about what forms 22 of ID the Lieutenant Governor thought should be included 23 in the bill; is that correct? 24 MS. HALPERN: To the extent the witness 25 can answer the question with regard to public statements</p>



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<p style="text-align: right;">41</p> <p>1 that the Lieutenant Governor made, he's free to answer 2 it. 3 Q. (By Ms. Westfall) Could you answer as to 4 public statements? 5 <b>A. I don't recall particular public statements 6 regarding Senate Bill 362.</b> 7 Q. And do you recall -- I'm not asking for your 8 testimony. You're counsel's already directed you not to 9 answer. Do you recall private statements from 10 Mr. Dewhurst concerning his opinion on which forms of ID 11 should be included in the Senate Bill 362? 12 <b>A. I don't recall.</b> 13 Q. Are you familiar with the Crawford Voter ID 14 decision? 15 <b>A. Yes.</b> 16 Q. When was that issued? 17 <b>A. Oh, I can't remember the year.</b> 18 Q. Was it April 2008? 19 <b>A. That sounds right.</b> 20 Q. Did you read it when it was issued? 21 <b>A. Yes.</b> 22 Q. Did the Crawford decision have any impact on 23 the development of Voter ID legislation in Texas? 24 <b>A. Probably so.</b> 25 Q. Do you know how it did?</p>	<p style="text-align: right;">43</p> <p>1 speculation as phrased. 2 Q. (By Ms. Westfall) You may answer. 3 <b>A. Yeah. I think individual legislators or 4 sponsors of the bill might interpret their own way. I 5 think it probably to each them said that if you enact a 6 plan that is not overly burdensome, then it will be held 7 constitutional.</b> 8 Q. Did the Indiana law issue, do you recall, 9 permit the use of nonphoto ID? 10 <b>A. I cannot recall if it was nonphoto or --</b> 11 Q. And I will represent to you that it did not 12 allow the use of nonphoto ID. 13 <b>A. Okay.</b> 14 Q. Why did, in light of the Indiana law and the 15 Crawford decision, SB 362 permit voters to present 16 nonphoto ID? 17 <b>A. I don't know.</b> 18 Q. Why was nonphoto ID permissible under Senate 19 Bill 362? 20 MS. HALPERN: Objection, asked and 21 answered. 22 Q. (By Ms. Westfall) You may answer. 23 <b>A. Why was it permissible?</b> 24 Q. Why was it included as a form of permissible 25 ID?</p>
<p style="text-align: right;">42</p> <p>1 <b>A. It -- I can say for myself, it impacted my 2 understanding of permissible boundaries under the 3 constitution for voter identification legislation.</b> 4 Q. And what were those boundaries? 5 <b>A. I think, broadly speaking, the court in 6 Crawford said that the state has an interest in securing 7 elections and improving confidence in those elections 8 and deterring fraud and making sure that voter roles are 9 accurate. That, I believe it says even if in some 10 negligible way individual voters might be adversely 11 impacted, if that does not rise to a level that 12 outweighs the good brought by enacting legislation, then 13 the law might be upheld. In other words, there can be 14 some burden involved with photo identification or voter 15 identification legislation, and through that lens, they 16 upheld Indiana's voter identification.</b> 17 Q. And based on what you just said described about 18 the Crawford decision, how did that shape your view of 19 how Texas could enact Voter ID legislation? 20 <b>A. I think, again, generally speaking, it showed 21 that -- it confirmed that the Supreme Court will uphold 22 photo identification requirements in some circumstances.</b> 23 Q. And how did that apply to the Texas 24 legislature's efforts to enact Voter ID? 25 MS. HALPERN: Objection, calls for</p>	<p style="text-align: right;">44</p> <p>1 <b>A. I don't know. I mean, I can say generally in 2 the legislative process, bills change for lots of 3 reasons: The desire of the sponsor, input from other 4 legislators, input from the public, litigation. It 5 could be any reason or all of those reasons.</b> 6 Q. But do you know as to this particular issue as 7 to why nonphoto was included in Senate Bill 362? 8 <b>A. I do not, no.</b> 9 Q. Are you familiar with the model Voter ID bill 10 created by the American Legislative Exchange Council 11 known as ALEC? 12 <b>A. I know what ALEC is, but I'm not familiar with 13 new specific model legislation.</b> 14 Q. And do you have any understanding as to why 15 Senate Bill 362 limited the forms of acceptable ID to 16 those listed that you just testified to on Pages 5 and 6 17 of Exhibit 150? 18 <b>A. I don't know why this list is this list 19 specifically.</b> 20 Q. Do you know how any of the IDs on that list 21 arose in terms of their inclusion in the bill? 22 <b>A. Some of them are current law or were current 23 law at the time and were retained.</b> 24 Q. And those IDs would include which ones? 25 <b>A. Driver license, some of the nonphoto utility</b></p>

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<p style="text-align: right;">45</p> <p>1 bill, bank statement, government check, paycheck, other 2 government documents. 3 Q. Anything else? 4 A. That appears to be all of them that were 5 retained. 6 Q. Do you recall how provisional ballots were 7 treated under Senate Bill 362? 8 A. I don't recall, but I could look if you would 9 like. 10 Q. Certainly, that would be helpful. 11 Unfortunately, I don't have a page to direct you to, but 12 I'm sure you're sufficiently familiar with this to find 13 it quickly. 14 A. It looks like on the bottom of Page 7 on to 15 Page 8 is the election code section dealing with 16 provisional ballots, and it looks like it just changes a 17 cross reference, so I guess it retains the existing 18 provisional ballot system. 19 Q. What was that system? 20 A. As I understand it at the time, if the person 21 appears without appropriate identification or is 22 otherwise possibly not eligible to vote, they may still 23 cast a provisional ballot if they execute an affidavit 24 stating that they are indeed a registered voter and are 25 eligible to vote.</p>	<p style="text-align: right;">47</p> <p>1 Q. So is it true, fair to say, that Senate Bill 2 362 was more lenient with regard to provisional ballots 3 than the Indiana law was? 4 MS. HALPERN: You're asking him to rely on 5 your representation in answering -- 6 MS. WESTFALL: Yes. 7 MS. HALPERN: -- that question, Counsel? 8 MS. WESTFALL: Yes. 9 A. I'm not sure I would use the word lenient. I 10 think a voter allowed to return with appropriate 11 identification could be more certain that their 12 provisional ballot would be counted. And so they are 13 different systems, I would allow that. 14 Q. (By Ms. Westfall) But certainly under Senate 15 Bill 362, the voter was not required to return a second 16 time to a voting official to show ID, correct? And that 17 different from Indiana; is that correct? 18 A. I think that's correct. 19 Q. Before Senate Bill 362 was filed, was there any 20 analysis of the likely impact of that bill on voters 21 that you're aware of? 22 A. I can't recall from 2009. 23 Q. Any analysis about the number of registered 24 voters without requisite ID under Senate Bill 362? 25 A. I don't recall.</p>
<p style="text-align: right;">46</p> <p>1 Q. The voter need not take any further action 2 after other casting that ballot to ensure that it will 3 be counted; is that correct? 4 A. They have to -- after they sign an affidavit. 5 So they have to cast a provisional ballot and then sign 6 the affidavit. 7 Q. And after that, the voter need not return to 8 the election office with a form of acceptable ID; is 9 that correct? 10 A. I think that's correct. 11 Q. Do you know why Senate Bill 362 permitted 12 provisional ballots cast by voters without necessary ID 13 to be counted without requiring further action on the 14 part of the voter? 15 A. I don't know. 16 Q. Do you know why it essentially maintain the 17 status quo for provisional ballots? 18 A. I don't know. 19 Q. Are you aware of how the Indiana law at issue 20 in Crawford treated provisional ballots? 21 A. I cannot recall. 22 Q. Do you recall -- well, I'll represent to you 23 that it required the voter to return to the office. 24 Does that sound familiar? 25 A. Okay. I take your word for it.</p>	<p style="text-align: right;">48</p> <p>1 Q. Do you recall any communications about the 2 impact of Senate Bill 362 on minority voters? 3 A. I don't recall specific communications. 4 Q. Are you aware of any analysis of the impact of 5 Senate Bill 362 on minority voters? 6 A. I can't recall any specific. 7 Q. Was there any consideration given to analyzing 8 Spanish surnamed registered voters who had Texas driver 9 license or personal ID? 10 A. It's possible. I just can't recall. 11 Q. So you testified in your prior deposition about 12 the purpose of Senate Bill 362, in which I think you 13 alluded to earlier in this deposition, the purposes were 14 to improve the integrity of elections and instill 15 confidence in the electorate. Do you recall that 16 testimony? 17 A. I don't recall the testimony, but I'm sure 18 that's correct. 19 Q. And is that still your testimony about the 20 purpose of the Senate Bill 362? 21 A. I think there are certain -- those are some of 22 the purposes, sure. 23 Q. Which are the other purposes? 24 A. Again, you'd have to ask the bill sponsors, 25 their purpose on sponsoring it and passing legislation.</p>

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13 (Pages 49 to 52)

<p style="text-align: right;">49</p> <p>1 Q. Do you recall any that you were kind of -- you 2 were kind of in the mix of the development and drafting 3 of Senate Bill 362. Do you recall any other purposes 4 sitting here today?</p> <p>5 A. And again, I think public statements that I 6 recall are in that same vein, protecting voting 7 integrity, improving voter confidence, making sure that 8 voter fraud or inaccurate voter roles or other problems 9 did not result in inaccurate or unsecured elections.</p> <p>10 Q. And what was the -- what was the basis for the 11 understanding that there was -- that there was the lack 12 of confidence in the electorate?</p> <p>13 A. Well, I think one indication would have been 14 that public polls again showed overwhelming numbers of 15 voters -- of citizens supported some form of photo ID.</p> <p>16 Q. And from the polls supporting Voter ID, you 17 could infer that there was a lack of confidence in the 18 electorate, is that your testimony?</p> <p>19 A. I think if people wanted an improvement in the 20 process, that would probably be derived from a -- some 21 lack of confidence in the system.</p> <p>22 Q. And aside from those public opinion polls, is 23 there any other basis or facts you're aware of that made 24 the legislature feel there was a lack of confidence in 25 the voting system?</p>	<p style="text-align: right;">51</p> <p>1 outside of in-person voter fraud. I mean, to the extent 2 that it shows the Legislature and local officials are 3 concerned about fraud and aware of fraud and taking 4 steps to prevent that fraud, that may indeed have an 5 impact and -- and deter other types of fraud.</p> <p>6 Q. (By Ms. Westfall) And what particular types of 7 fraud are you -- are you describing or referring to?</p> <p>8 A. I mean, generally, in the elections, there can 9 be in-person voter fraud. There can be mail ballot 10 fraud. There might be undue coercion of voters or 11 manipulation of results. I'm sure there are some others 12 that I'm forgetting.</p> <p>13 Q. Which types of fraud specifically do you 14 believe existed in 2009 that warranted Voter ID 15 legislation?</p> <p>16 MS. HALPERN: Objection, compound.</p> <p>17 Q. (By Ms. Westfall) You may answer.</p> <p>18 A. The types of fraud that I believe existed in 19 2009 that warranted Voter ID legislation? Again, I 20 think there's, you know, evidence in our history of each 21 of those types of fraud I just mentioned, and Voter ID 22 was certainly designed, as far as I can tell, to combat 23 one of those types of fraud.</p> <p>24 Q. And I believe you just testified that it would 25 combat the in-person voter fraud at the polls; is that</p>
<p style="text-align: right;">50</p> <p>1 A. Again, I may be forgetting some testimony 2 during that session. I'm sure individual sponsors had 3 communications with their constituents, but I'm not 4 particularly aware of those.</p> <p>5 Q. In terms of improving the integrity of 6 elections, again, what was the need for that in 2009?</p> <p>7 A. The need to?</p> <p>8 Q. What was the factual basis for the need to 9 remedy that issue?</p> <p>10 A. Again, I can't speak for what each individual 11 bill sponsor supporter thinks. My understanding at the 12 time is that fraud exists in the elections, and there 13 are various ways you can improve the security of those 14 elections. And those efforts to improve the security 15 are worthwhile if they're not unduly burdensome on 16 voters.</p> <p>17 Q. And to be clear, Voter ID addresses the problem 18 of in-person voter fraud; is that correct?</p> <p>19 A. That's correct.</p> <p>20 Q. And so is it your testimony that Voter ID 21 legislation to address that type of fraud addresses 22 fraud more generally?</p> <p>23 MS. HALPERN: Objection, confusing, vague.</p> <p>24 A. I -- I think it's unclear to me exactly how 25 certain types of fraud might be deterred from this</p>	<p style="text-align: right;">52</p> <p>1 correct?</p> <p>2 A. Correct. That was --</p> <p>3 Q. Is it also your testimony that it would address 4 these other types of fraud?</p> <p>5 A. It's my testimony that the intent of the bill, 6 as I understand it, was to address in-person voter 7 fraud, and that that attempt to address one type of 8 fraud might have the additional impact of deterring 9 other types of fraud.</p> <p>10 Q. Do you have any factual support for that 11 inference?</p> <p>12 A. No, other than, you know, common sense and 13 looking at the legislature generally.</p> <p>14 Q. How would Senate Bill 362 eliminate the lack of 15 confidence in the electorate?</p> <p>16 A. I mean, again, I think in my impression is that 17 if you make steps to eliminate fraud in elections, 18 people that do cast votes that are eligible voters can 19 be more secure that their vote will be counted and not 20 offset by an ineligible voter, and that will instill 21 confidence in that particular elector or voter, I should 22 say, and in the electorate, in general.</p> <p>23 Q. And how do you -- what's the basis for 24 inferring that?</p> <p>25 A. Again, I think just generally, any legislation,</p>

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<p style="text-align: right;">53</p> <p>1 any criminal law, any area where the legislature is 2 acting and taking steps, the intended impact, at least, 3 is to give the public confidence that the legislature is 4 acting on their behalf. 5 Q. Do you have any factual basis, other than what 6 you just testified to, that drawing that conclusion that 7 the bill would have that effect? 8 A. I don't have -- I can't -- I don't have a 9 specific example, again, other than just that's sort of 10 the whole point of the legislature is to act on behalf 11 of the public presumably to instill confidence and not 12 to instill some other feeling. 13 Q. Are you aware whether Mr. Dewhurst tied Voter 14 ID to immigration as issues that -- in other words, put 15 differently, that Voter ID and enacting that would help 16 to stem illegal immigration? 17 MS. HALPERN: Let me again caution you not 18 to reveal any communications while you were wearing your 19 attorney-client privilege hat, not -- not to violate the 20 deliberative process privilege to the extent it's 21 applicable to this question, and not to violate his 22 legislative privilege. 23 A. I'm not aware of any link between immigration 24 and Voter ID. 25 Q. (By Ms. Westfall) And are you not -- is any of</p>	<p style="text-align: right;">55</p> <p>1 possess these documents in 362? 2 Q. Yes. 3 MS. HALPERN: Objection, calls for 4 speculation. 5 Q. (By Ms. Westfall) You may answer. 6 A. I don't know specific segments of the 7 population. It would seem to me that -- that any 8 segment of the population would be able in some way to 9 obtain at least one of these forms. 10 Q. But getting back to my question in terms of 11 current possession, as opposed to ability to obtain ID 12 in 362, are there any portions of the population that 13 you believe are less likely to currently possess the 14 forms of ID in 362? 15 A. I'm not sure. 16 Q. Are poor voters the least likely to possess ID 17 documents? 18 A. Well, I mean, one of the forms of ID is a 19 government check or government benefits, and so those, 20 in fact, to be populations most likely to receive those. 21 Driver's licenses or personal identification cards I 22 think are necessary to obtain a lot of those benefits, 23 so maybe -- I think they seem as likely to be able to 24 obtain or to possess those documents. So I guess I 25 would say not necessarily to your question.</p>
<p style="text-align: right;">54</p> <p>1 your answer not providing testimony based on the 2 instruction of your counsel? 3 A. No. 4 Q. Did Senate Bill 362, to your knowledge, require 5 a voter to prove citizenship when casting a ballot? 6 A. I'd have to look at the bill if you don't mind. 7 Q. Sure. Certainly. 8 A. I think some of these forms of ID would require 9 citizenship to obtain possibly, but they're also some on 10 here that it's possible that noncitizens would be able 11 to obtain. 12 Q. So is your testimony that it -- Senate Bill 362 13 would not require a voter to prove citizenship for that 14 reason because some of these IDs do not require proof of 15 citizenship; is that correct? 16 MS. HALPERN: Objection, misstates the 17 testimony. 18 Q. (By Ms. Westfall) You may answer. 19 A. That sounds correct. 20 Q. Are you aware of any nonpublic unstated 21 purposes of Senate Bill 362? 22 A. I'm not aware of any. 23 Q. What portion of the public is least likely to 24 possess ID documents? 25 A. What portion of the public is least likely to</p>	<p style="text-align: right;">56</p> <p>1 Q. Are minority voters in Texas more likely to be 2 poor than Anglos, to your knowledge? 3 A. I would assume, I mean, I think historically, 4 poor populations have generally had higher 5 representation among minorities, that's fair. And 6 that's probably true in Texas and every other state. 7 Q. Did supporters of Senate Bill 362 adopt any 8 procedural mechanisms to increase the likelihood of the 9 bill's passage? 10 A. I'm sorry, could you repeat? 11 Q. Certainly. Did supporters of Senate Bill 362 12 adopt any procedural mechanisms to increase the 13 likelihood of the bill's passage? 14 A. I don't recall specific examples. I think any 15 bill sponsored uses the rules of the House and Senate to 16 get their bill passed, whether those are unique or 17 special or any other descriptive, probably in the eye of 18 the beholder. If they're in the rules, they're in the 19 rules, and at the disposal of the sponsor. 20 Q. But were -- getting back to my question. Were 21 there any procedural mechanisms you can recall that were 22 put into place by the supporters of Senate Bill 362 to 23 ensure its passage? 24 A. I don't recall specific examples. 25 Q. Did the Lieutenant Governor's Office play any</p>

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16 (Pages 61 to 64)

<p style="text-align: right;">61</p> <p>1 A. Okay.</p> <p>2 Q. Have you seen this -- could you take a look at</p> <p>3 this exhibit.</p> <p>4 A. Okay.</p> <p>5 Q. What is the article about?</p> <p>6 A. It's about the beginning of the session in 2009</p> <p>7 and the rules debate and Voter ID debate.</p> <p>8 Q. Do you recall having been in the closed-door</p> <p>9 caucus of the full Senate meeting referred to in this</p> <p>10 article?</p> <p>11 A. Again, I was not.</p> <p>12 Q. Do you recall hearing about what was said in</p> <p>13 this closed-door Caucus of the full Senate?</p> <p>14 A. I did not hear anything.</p> <p>15 Q. Do you know which particular Senators supported</p> <p>16 Rule 5.11D?</p> <p>17 A. I imagine the Senators that voted for the</p> <p>18 adoption of the rules, and I don't know the specific</p> <p>19 Senators who did.</p> <p>20 Q. Did the Senate ultimately adopt Rule 5.11D?</p> <p>21 A. My memory is, yes.</p> <p>22 Q. Is it true that only a simple majority of</p> <p>23 Senators was required to enact the rules for 2009?</p> <p>24 A. My memory is that Senate rules are adopted by a</p> <p>25 majority of the Senators.</p>	<p style="text-align: right;">63</p> <p>1 Q. A bill.</p> <p>2 A. I mean, my understanding of the legislative</p> <p>3 process is bills are introduced and referred to</p> <p>4 committee and go through the committee process, and if</p> <p>5 the Senator wished to bring it to the floor, it's placed</p> <p>6 on an Intent Calendar, and then if the Lieutenant</p> <p>7 Governor recognizes that Senator on that bill, the</p> <p>8 Senate debates it. And there are various procedures and</p> <p>9 timetables in the mix there.</p> <p>10 Q. How does the 5.11D change consideration of the</p> <p>11 Voter ID bill for 2009?</p> <p>12 A. It treated it -- it said that if a special</p> <p>13 order relates to Voter ID, then it could be considered</p> <p>14 within 24 hours.</p> <p>15 Q. And in order to do that only required a vote of</p> <p>16 the majority of the Senate; is that correct?</p> <p>17 A. Correct.</p> <p>18 Q. And ordinarily to set a special order would</p> <p>19 require two-thirds support from two-thirds of the</p> <p>20 Senators; is that correct?</p> <p>21 MS. HALPERN: Objection, misstates the</p> <p>22 testimony.</p> <p>23 A. I think -- right. I mean 5.11A says that a</p> <p>24 special order may be set with affirmative vote of</p> <p>25 two-thirds. And then D says, on Voter ID, it may be set</p>
<p style="text-align: right;">62</p> <p>1 Q. And not of two-thirds of the Senators; is that</p> <p>2 correct?</p> <p>3 A. I think that's correct but not -- not</p> <p>4 parliamentary.</p> <p>5 Q. Do you know why Rule 5.11D was adopted?</p> <p>6 A. I assume it was adopted because the Senate</p> <p>7 liked it.</p> <p>8 Q. Any other reasons?</p> <p>9 A. If I could look back at the rule, 5.11D deals</p> <p>10 with photo identification bills or resolutions. I</p> <p>11 assume that they wanted to make sure that those types of</p> <p>12 bills or resolutions were treated as outlined in 5.11D.</p> <p>13 Q. What was the purpose of allowing -- providing</p> <p>14 that Voter ID legislation could be treated as a special</p> <p>15 order?</p> <p>16 A. I don't know the purpose of it.</p> <p>17 Q. What was the effect of treating it as a special</p> <p>18 order?</p> <p>19 A. As I understand Senate rules, and as 5.11 lays</p> <p>20 out, it would allow Voter Identification requirements to</p> <p>21 be heard before the Committee of the Whole, 24 hours or</p> <p>22 more after the special order was set.</p> <p>23 Q. How would a bill ordinarily be treated if this</p> <p>24 5.11D were not in place?</p> <p>25 A. Bill or special order?</p>	<p style="text-align: right;">64</p> <p>1 by a majority of the members of the Senate.</p> <p>2 Q. (By Ms. Westfall) So it carves out an exception</p> <p>3 for Voter ID with regard to its designation as a special</p> <p>4 order; is that correct?</p> <p>5 A. Yes.</p> <p>6 Q. Was Senate Bill 362 assigned to the Committee</p> <p>7 of the Whole?</p> <p>8 A. My memory is, yes, it was.</p> <p>9 Q. What is the Committee of the Whole?</p> <p>10 A. Instead of being referred to committee with a</p> <p>11 limited number of members that meets in a committee</p> <p>12 room, typically, the Committee of the Whole consists of</p> <p>13 every Senator and the Lieutenant Governor and they meet</p> <p>14 on the Senate floor.</p> <p>15 Q. And ordinarily would 362, as an election bill,</p> <p>16 have been assigned to the State Affairs Committee?</p> <p>17 A. Most State Affairs -- most election bills in</p> <p>18 the Senate are referred to State Affairs. My memory is</p> <p>19 that some could be referred to jurisprudence and it's</p> <p>20 possible some other committee.</p> <p>21 Q. Can you recall any other election bill that was</p> <p>22 referred to the Committee of the Whole besides 362,</p> <p>23 Senate Bill 362 and Senate Bill 14?</p> <p>24 A. I don't recall any.</p> <p>25 Q. Can you recall any other bills that the</p>



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<p style="text-align: right;">65</p> <p>1 Lieutenant Governor assigned to the Committee of the</p> <p>2 Whole besides Senate Bill 362?</p> <p>3 A. I'm sorry, what types of bills?</p> <p>4 Q. Any bill.</p> <p>5 A. Any bill. My memory is that the Committee of</p> <p>6 the Whole has met before and I cannot remember all the</p> <p>7 specific instances except it's possible redistricting,</p> <p>8 it's possible school finance -- and in fact, I should --</p> <p>9 to clarify an earlier remark: The school finance bill</p> <p>10 from a few sessions ago may have had some election</p> <p>11 provisions in it. Those are the examples that come to</p> <p>12 mind.</p> <p>13 Q. So school financing, what session was that,</p> <p>14 that it was referred to the Committee of the Whole?</p> <p>15 A. It may have been, and again, I can't remember</p> <p>16 if it was or not. It may have been -- and it would have</p> <p>17 been 2006. But again, I cannot remember for sure if it</p> <p>18 was the Committee of the Whole.</p> <p>19 Q. Was school financing set as a special order by</p> <p>20 a simple majority?</p> <p>21 A. I can't recall.</p> <p>22 Q. Other than the bills you just testified to, are</p> <p>23 you aware of any other bills that Lieutenant Governor</p> <p>24 has assigned to the Committee of the Whole?</p> <p>25 A. I can't remember others.</p>	<p style="text-align: right;">67</p> <p>1 that they can immediately or within a very short period</p> <p>2 of time be heard by the full Senate?</p> <p>3 A. I'm not sure.</p> <p>4 Q. Do Mr. Dewhurst and Senator Fraser have a</p> <p>5 social relationship outside of their working</p> <p>6 relationship?</p> <p>7 A. I don't know.</p> <p>8 Q. Do you know whether Mr. Dewhurst had dinner</p> <p>9 with Senator Fraser on March -- early March 2009?</p> <p>10 A. I don't know.</p> <p>11 Q. Do you know when Senate Bill 362 was considered</p> <p>12 by the Senate in 2009?</p> <p>13 A. I don't remember the date.</p> <p>14 Q. Could you refer back to -- turn your attention</p> <p>15 back to Exhibit 151.</p> <p>16 A. Yes.</p> <p>17 Q. Could you take a look at that -- and what is</p> <p>18 that?</p> <p>19 A. Exhibit 151 is a printout from the Texas</p> <p>20 Legislature Online. It is the bill history for Senate</p> <p>21 Bill 362 from the 81st regular session.</p> <p>22 And your question is when did the Senate</p> <p>23 consider Senate Bill 362?</p> <p>24 Q. Yes.</p> <p>25 A. Well, it was received by the Secretary of the</p>
<p style="text-align: right;">66</p> <p>1 Q. And in terms of the redistricting bill, which</p> <p>2 bill was this that was referred to the Committee of the</p> <p>3 Whole?</p> <p>4 A. I can't remember specific examples. Again, I</p> <p>5 was just -- if the Committee of the Whole -- I remember</p> <p>6 the Committee of the Whole has met in the last decade</p> <p>7 that I've been around the Capitol and my memory is that</p> <p>8 it might have been for redistricting one year, but I</p> <p>9 can't remember a specific year example.</p> <p>10 Q. Do you know whether Mr. Dewhurst assigned</p> <p>11 Senate Bill 362 to the Committee of the Whole to</p> <p>12 expedite its consideration?</p> <p>13 A. I don't know why he did.</p> <p>14 Q. Did it have the effect of expediting</p> <p>15 consideration?</p> <p>16 A. I can say, generally speaking, the Committee of</p> <p>17 the Whole might expedite it, but it still I think</p> <p>18 requires separate votes by the Committee of the Whole</p> <p>19 and by the Senate as a sitting body. And I also</p> <p>20 remember, in I think it was 2009, this particular</p> <p>21 Committee of the Whole met for better than 24 hours,</p> <p>22 which seems like -- if that was speeding up the process,</p> <p>23 then it didn't do a very good job, I guess.</p> <p>24 Q. Is it correct that when bills are assigned to</p> <p>25 the Committee of the Whole as opposed to State Affairs,</p>	<p style="text-align: right;">68</p> <p>1 Senate in December 2008. It was read and referred to</p> <p>2 the Committee of the Whole on February 17. It was</p> <p>3 scheduled and considered for a public hearing on March</p> <p>4 10th and then passed by the Senate on March 11. Then</p> <p>5 read a second time on March 17th, read a third time on</p> <p>6 March 18th, and then reported by the Senate on March</p> <p>7 18th.</p> <p>8 Q. Thank you. And the lengthy public testimony</p> <p>9 you're referring to that occurred a period of 24 hours</p> <p>10 occurred on March 10th; is that correct?</p> <p>11 A. I think that must be right. Testimony taken in</p> <p>12 committee would likely have been March 10th.</p> <p>13 Q. Was that testimony taken in the Committee of</p> <p>14 the Whole?</p> <p>15 A. My memory is that yes, it was.</p> <p>16 Q. During the Committee of the Whole's</p> <p>17 consideration of Senate Bill 362, there were concerns</p> <p>18 that were raised by the impact of the bill on minority</p> <p>19 voters, right?</p> <p>20 A. I think that's right.</p> <p>21 Q. Did supporters of Senate Bill 362 take any</p> <p>22 steps in response to those concerns?</p> <p>23 A. I can't recall specific steps but I do recall</p> <p>24 that they -- I think I recall that they contested that</p> <p>25 it would in fact have an adverse impact on minority</p>

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18 (Pages 69 to 72)

<p style="text-align: right;">69</p> <p>1 voters, so --</p> <p>2 Q. So they -- go ahead.</p> <p>3 A. All right. And so, I'm sure that would inform</p> <p>4 whether they felt the need to take steps.</p> <p>5 Q. So is it your testimony that no changes were</p> <p>6 made to the bill in the Senate as a result of those</p> <p>7 concerns?</p> <p>8 A. I would have to see the different versions of</p> <p>9 the bill through this process to know for sure.</p> <p>10 Q. Did Mr. Dewhurst, to your recollection, take</p> <p>11 any actions in response to the concerns about the impact</p> <p>12 of the bill on minority voters?</p> <p>13 A. Take actions?</p> <p>14 Q. Yes.</p> <p>15 A. I mean, Lieutenant Governor's powers to act on</p> <p>16 a bill once it's before a Committee or the Senate are</p> <p>17 relatively limited. He can't introduce amendments or --</p> <p>18 he's not a bill sponsor. I'm certainly not aware of any</p> <p>19 formal action he took, whether he spoke with Senators or</p> <p>20 the public, I don't know.</p> <p>21 Q. So to your knowledge, Mr. Dewhurst did not take</p> <p>22 any actions in response to these concerns, based on your</p> <p>23 knowledge; is that fair?</p> <p>24 A. I'm not aware of any specific actions he took.</p> <p>25 Q. Did Senator Fraser take any actions in response</p>	<p style="text-align: right;">71</p> <p>1 A. Yes. Statement regarding votes cast by Senator</p> <p>2 West.</p> <p>3 Q. And do you recall generally without -- and I'm</p> <p>4 not asking you to read the entire letter into the</p> <p>5 record, but do you recall generally what this letter</p> <p>6 concerns?</p> <p>7 A. I don't recall.</p> <p>8 Q. Do you want to take look at it and tell me when</p> <p>9 you've had a chance to review it.</p> <p>10 A. Okay.</p> <p>11 Q. What does it generally pertain to?</p> <p>12 A. Senator West explains that each of the ethnic</p> <p>13 minority Senators voted against Senate Bill 362 at each</p> <p>14 stage of its passage.</p> <p>15 Q. Were there any responses to this letter that</p> <p>16 you're aware of from supporters of Senate Bill 362?</p> <p>17 A. I'm not aware.</p> <p>18 Q. Are you aware of any responses off the record</p> <p>19 in response to this letter?</p> <p>20 A. I'm not aware of any responses.</p> <p>21 Q. And that's on or off the record?</p> <p>22 A. I -- I don't recall any responses on or off the</p> <p>23 record.</p> <p>24 Q. Are you aware of any concerns that refusal to</p> <p>25 make changes to the bill, to Senate Bill 362, might</p>
<p style="text-align: right;">70</p> <p>1 to any of these concerns raised, that you're aware?</p> <p>2 A. I don't know.</p> <p>3 Q. And overall, were there any changes made to</p> <p>4 Senate Bill 362 at any stage in the bill's history to</p> <p>5 respond to concerns about minority voters?</p> <p>6 A. Again, I would have to see individual copies</p> <p>7 from each state of the process.</p> <p>8 (Exhibit 154 marked for identification.)</p> <p>9 Q. (By Ms. Westfall) You've been handed what's</p> <p>10 been marked as Exhibit 154. Do you recognize this</p> <p>11 document?</p> <p>12 A. It looks like the Senate Journal entry from the</p> <p>13 23rd day of session, which would be March 18, 2009.</p> <p>14 Q. And I believe you just testified that that was</p> <p>15 the day of the final -- the final day of the Senate's</p> <p>16 consideration of Senate Bill 362; is that right?</p> <p>17 A. If I could look at the timeline again. March</p> <p>18 18th was when the Senate reported the engrossed version</p> <p>19 of SB 362.</p> <p>20 Q. That concluded the Senate's consideration of</p> <p>21 Senate Bill 362; is that right?</p> <p>22 A. It sent the bill to the House.</p> <p>23 Q. Thank you. Do you see that on Page 591 of the</p> <p>24 Senate Journal, Exhibit 154, there is a letter from</p> <p>25 Senator West?</p>	<p style="text-align: right;">72</p> <p>1 threaten its preclearance?</p> <p>2 A. Could you repeat, please?</p> <p>3 Q. Certainly. Let me withdraw that question.</p> <p>4 Are you aware of any concerns that refusal</p> <p>5 to make changes to Senate Bill 362 in response to</p> <p>6 concerns about its impact on the minority voters might</p> <p>7 threaten its preclearance under Section 5?</p> <p>8 A. I don't recall specific concerns or efforts.</p> <p>9 Q. Did the letter from Senator West cause you any</p> <p>10 concern about its likelihood of preclearance under</p> <p>11 Section 5 of the Voting Rights Act?</p> <p>12 A. I can't remember my specific reactions to</p> <p>13 Senator West's statement or that I saw the statement.</p> <p>14 It's possible in the Senate to go back after the day and</p> <p>15 to amend the Journal by submitting a statement. And so</p> <p>16 I'm not sure if Senator West read this or submitted it</p> <p>17 on the day of or submitted it later. But in any case, I</p> <p>18 can't remember my specific reaction.</p> <p>19 Q. Do you recall when you first became aware of</p> <p>20 this letter from Senator West?</p> <p>21 A. I mean, I was aware at the time who voted</p> <p>22 against the bill. I don't know -- I can't recall when I</p> <p>23 became aware of Senator West's statement as laid out in</p> <p>24 the Journal.</p> <p>25 Q. Were you aware of these concerns, generally, at</p>

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19 (Pages 73 to 76)

<p style="text-align: right;">73</p> <p>1 the time Senate Bill 362 was being considered?</p> <p>2 A. My memory is that during the debate before the</p> <p>3 Committee of the Whole, the Senators in opposition</p> <p>4 stated something to this effect.</p> <p>5 Q. Did you have any concerns that -- that those</p> <p>6 objections on the part of bill opponents would create</p> <p>7 any barriers to preclearance under Section 5 of the</p> <p>8 Voting Rights Act?</p> <p>9 A. It would be better if they had all voted for</p> <p>10 it. But I know it's also true that the Democrats, as a</p> <p>11 block, voted against lots of bills over the years,</p> <p>12 including Voter ID. And in this case, he lays out that</p> <p>13 all 12 Democratic Senators voted against the bill, and</p> <p>14 yes, that includes minority Senators. But it -- again,</p> <p>15 I think Democrats voting as a block against bills is --</p> <p>16 it's not unheard of. It's not ideal in most cases, but</p> <p>17 its not unheard of.</p> <p>18 Q. And you didn't see it as a problem in terms of</p> <p>19 preclearance of Senate Bill 362 if that had happened, if</p> <p>20 it had been enacted?</p> <p>21 A. Again, it would have been better if all the</p> <p>22 Senators supported the bill.</p> <p>23 Q. So your answer is no? It was not a hurdle?</p> <p>24 A. I don't recall my immediate impression, but I</p> <p>25 don't think I would have seen it as an insurmountable</p>	<p style="text-align: right;">75</p> <p>1 single person uses every second of time on every single</p> <p>2 bill to delay consideration of other bills or other</p> <p>3 actions, chubbing is the term that's often used.</p> <p>4 Q. And how did opponents of Senate Bill 362 -- how</p> <p>5 did they manage to chub it to death, so to speak?</p> <p>6 A. Me memory from watching it on TV, because I was</p> <p>7 not in the House, is that on other calendars, the major</p> <p>8 State calendars, just one calendar bill the House</p> <p>9 considers is that there were other calendars for that,</p> <p>10 or days before that even, wherein the Democrats -- my</p> <p>11 memory is that it was all Democrats -- spoke at length</p> <p>12 on those procedural or uncontroversial bills to delay</p> <p>13 the consideration of the major State calendar.</p> <p>14 Q. Who -- who was the Speaker at the time that the</p> <p>15 Senate Bill 362 was under consideration?</p> <p>16 A. In 2009 it would have been Joe Straus.</p> <p>17 Q. Could Speaker Straus have assigned the Senate</p> <p>18 bill to a different calendar when it was received in the</p> <p>19 House to ensure its passage?</p> <p>20 A. My understanding is that it's the calendar's</p> <p>21 committee and the Speaker who set the calendars in the</p> <p>22 House.</p> <p>23 Q. Why did he set it for a calendar where it could</p> <p>24 be chubbed?</p> <p>25 A. I don't know. I don't know why he did what he</p>
<p style="text-align: right;">74</p> <p>1 hurdle.</p> <p>2 Q. Senate Bill 362 was not passed by the House; is</p> <p>3 that correct?</p> <p>4 A. I would have to check the bill history.</p> <p>5 Q. Please go ahead and feel free to do so.</p> <p>6 A. Correct.</p> <p>7 Q. Do you know what happened to Senate Bill 362 in</p> <p>8 the House?</p> <p>9 A. It looks like on May 23, 2009, it would have --</p> <p>10 it was placed on the major State calendar. And my</p> <p>11 memory is that there's a fair amount of opposition from</p> <p>12 Democrats in the House, some would say stall tactics.</p> <p>13 They talked at length on bills that normally would have</p> <p>14 been passed as a matter of routine. To delay</p> <p>15 consideration of the bill on the major State calendar,</p> <p>16 it was certainly, again, met with sort of stiff partisan</p> <p>17 opposition in the House. But I can't recall the</p> <p>18 specific details of its demise.</p> <p>19 Q. Is there a term that is used to refer to when</p> <p>20 there's a lot of talking about a bill to stop</p> <p>21 consideration of other bills?</p> <p>22 A. "Chubbing" is the word or term around the</p> <p>23 Capitol that's used, yes. Again, it's -- there's no</p> <p>24 filibuster allowed in the House. They have strict rules</p> <p>25 on the amount of time a person may speak, but if every</p>	<p style="text-align: right;">76</p> <p>1 did.</p> <p>2 Q. Were there other matters the House had to</p> <p>3 attend to in 2009 that were more important than Voter</p> <p>4 ID, in your view, and that's what caused the delay?</p> <p>5 A. I don't recall specific measures being</p> <p>6 considered by the House in 2009.</p> <p>7 Q. If Voter ID -- if Senate Bill 362 had been</p> <p>8 received by the House earlier in the session, would it</p> <p>9 have increased its likelihood of passage?</p> <p>10 A. Generally in the legislature, the earlier a</p> <p>11 chamber considers it, the more likely it is to pass.</p> <p>12 And as to your last question about the</p> <p>13 importance, I think whether a bill is important or which</p> <p>14 bill is more important is decided by each member of the</p> <p>15 House and Senate and varies likely from member to each</p> <p>16 member.</p> <p>17 Q. But there are leaders in each chamber, to be</p> <p>18 fair; isn't that correct?</p> <p>19 A. Yes.</p> <p>20 Q. Not -- not every single member of the House has</p> <p>21 equal weight or say as to what is given legislative</p> <p>22 priority; isn't that correct?</p> <p>23 A. That's correct.</p> <p>24 Q. Is it fair to say Speaker Straus has a fair</p> <p>25 amount of sway on which bill is to be heard in the House</p>

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21 (Pages 81 to 84)

<p style="text-align: right;">81</p> <p>1 legislative privilege. And your being -- the 2 legislators and their staff were required to produce 3 these documents, under the procedures I just described 4 earlier, which is highly confidential in discovery, 5 under seal submitted to the court, and the court will 6 rule on its admissibility at a later date. 7 MS. HALPERN: And I will also note this 8 appears to be predecisional since it's talking points 9 and reasons to support something which would seem to be 10 leading to part of the decision-making process, so I'm 11 going to assert that as well. 12 MS. WESTFALL: I'm not sure whether in 13 fact -- well, I don't believe, based on the logic of the 14 judge's ruling, that this document was withheld on the 15 basis of the legislative privilege and deliberative 16 process because the judge has not issued a ruling on 17 deliberative process in this litigation. 18 MS. HALPERN: Well -- 19 MS. WESTFALL: Therefore, you can make 20 that objection. We would take strong issue with it 21 because this document, which is document -- Exhibit 22 Number 155, TX00087007 through 87013 -- actually 87014, 23 it's a double-sided document -- pertains to Mr. Hebert's 24 activities for the Lieutenant Governor acting in his 25 capacity as leader of the Senate in a legislative</p>	<p style="text-align: right;">83</p> <p>1 still might be an attorney work product privilege 2 though. 3 MS. WESTFALL: Let us proceed having 4 designated this testimony as highly confidential. We'll 5 continue to keep it highly confidential until I indicate 6 that the designation is to be terminated. 7 MS. HALPERN: And with a running 8 objection. 9 MS. WESTFALL: With a running objection. 10 Understood. Thank you, Counsel. 11 Q. (By Ms. Westfall) Turning your attention back 12 to Exhibit 155, Mr. Hebert, do you recognize this 13 document? 14 A. It looks like an e-mail I sent to Janice McCoy 15 for use -- or it says, "For your use as needed," and it 16 is a series of attachments relating to talking points 17 and arguments in support of Senate Bill 362 as well as 18 some overview of various election laws and processes 19 used. 20 Q. And you just described a bunch of -- several 21 attachments to the e-mail to Exhibit 155. Did you draft 22 all those attachments yourself? 23 A. This looks like -- my memory is that, yes, I 24 drafted or at least substantially drafted these 25 documents.</p>
<p style="text-align: right;">82</p> <p>1 capacity and not in an executive capacity which would, 2 perhaps, under some circumstances, give -- give rise to 3 an ability to assert deliberative process. 4 MS. HALPERN: That's correct. And I mean, 5 I would even have a question about whether there was 6 attorney-client privilege here. I don't know the bona 7 fides of this document. I mean, the pages are stapled 8 together but whether, for example the last page, which 9 is clearly a recitation of law, has been stapled to the 10 preceding page but was it in fact part of some sort of 11 legal memorandum, I don't know. But just looking at it 12 on the face of it, you know, as -- as his lawyer, that 13 would give me pause that in fact it actually may have 14 been attorney-client privilege. 15 MS. WESTFALL: Well, I will -- I will 16 direct you to the Bates numbers. I will direct you to a 17 list of the attachments on the cover e-mail, 00087007 18 that refers to these attachments. This communication 19 was between Mr. Hebert and Janice McCoy, who is the 20 staff person for Senator Fraser, therefore, no attorney- 21 client. 22 MS. HALPERN: Well, I would agree with 23 that assuming that -- I will agree -- I will agree with 24 you that if in fact that is the case, the attorney- 25 client privilege is -- is probably a question. There</p>	<p style="text-align: right;">84</p> <p>1 Q. Turning your attention to the date of the 2 e-mail, what is the date of the e-mail? 3 A. March 4, 2009. 4 Q. Was this e-mail sent to Ms. McCoy shortly 5 before the Committee of the Whole's consideration of 6 Senate Bill 362? 7 A. I'd have to refer to the history again. The 8 e-mail is from March 4th and the committee took 9 testimony on March 10th. It was passed after that. So 10 yes, I mean, it was before consideration by the Senate. 11 Q. And several days before; is that correct? 12 A. Correct. 13 Q. When did you draft the attachments to Exhibit 14 155? 15 A. I do not recall. 16 Q. Roughly around the same time as the e-mail? 17 A. I can't recall. It may have been the fall 18 before session. It may have been right before. I can't 19 recall. 20 Q. Do you know why you drafted the attachments? 21 A. For her use as needed. Again, I think to help 22 with passage of the bill by providing outlines of 23 relevant law and arguments to extend to opponents of the 24 bill. 25 Q. Did anyone direct you to draft these</p>

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<p style="text-align: right;">85</p> <p>1 attachments?</p> <p>2 <b>A. I don't recall. I don't think so.</b></p> <p>3 Q. Did Frank Battle ask you to draft these</p> <p>4 attachments?</p> <p>5 <b>A. I don't recall. I don't think so.</b></p> <p>6 Q. Did you usually work independently and draft</p> <p>7 things that you thought would be helpful or did someone</p> <p>8 usually tell you to --</p> <p>9 <b>A. Usually I drafted --</b></p> <p>10 MS. HALPERN: Objection, asked and</p> <p>11 answered.</p> <p>12 Q. (By Ms. Westfall) You may answer.</p> <p>13 <b>A. As it was helpful, I drafted things.</b></p> <p>14 Q. Did Ms. McCoy ask you for these documents?</p> <p>15 <b>A. I can't recall.</b></p> <p>16 Q. Did anyone -- concerning all the attachments,</p> <p>17 did anyone provide you with comments or revisions on the</p> <p>18 documents before you sent them to Ms. McCoy?</p> <p>19 <b>A. I don't recall.</b></p> <p>20 Q. Did you provide these attachments to</p> <p>21 Mr. Dewhurst at any time during consideration of 362?</p> <p>22 <b>A. Possibly. I can't be certain but possibly.</b></p> <p>23 Q. Do you recall which attachments of Exhibit 155</p> <p>24 you provided and shared to Mr. Dewhurst?</p> <p>25 MS. HALPERN: I'm going direct him not to</p>	<p style="text-align: right;">87</p> <p>1 MS. WESTFALL: Solely?</p> <p>2 MS. HALPERN: Deliberative process and</p> <p>3 potentially attorney-client.</p> <p>4 MS. WESTFALL: Okay. Okay. Thank you.</p> <p>5 Q. (By Ms. Westfall) Besides Ms. McCoy, did you</p> <p>6 provide any of these attachments to any of other staff</p> <p>7 for any other Senators?</p> <p>8 <b>A. I can't recall.</b></p> <p>9 Q. Did you provide them to Senator Williams' staff</p> <p>10 person?</p> <p>11 <b>A. I don't recall. I don't remember Senator</b></p> <p>12 <b>Williams being particularly involved but I don't know</b></p> <p>13 <b>for sure.</b></p> <p>14 Q. Did you provide them to Senator Duncan's staff?</p> <p>15 <b>A. It's possible Jennifer Fagan, as his staff</b></p> <p>16 <b>person and Chair of State Affairs, may have seen these</b></p> <p>17 <b>but I can't recall for sure. I mean again, it's five</b></p> <p>18 <b>years ago.</b></p> <p>19 Q. Turning your attention to Texas 00087008,</p> <p>20 Reasons to Support Senate Bill 362 as Filed?</p> <p>21 <b>A. Uh-huh.</b></p> <p>22 Q. Do you see that you indicate that, "Senate Bill</p> <p>23 362 should be supported because that bill is not as</p> <p>24 restricted as the Indiana and Georgia ID bills"?</p> <p>25 <b>A. That's what it says.</b></p>
<p style="text-align: right;">86</p> <p>1 answer because that would -- that would violate the</p> <p>2 deliberative process privilege to the extent that this</p> <p>3 is giving advice for the forming of an opinion or the</p> <p>4 taking of an action. I think it falls squarely within</p> <p>5 the deliberative process --</p> <p>6 THE COURT REPORTER: You think it's</p> <p>7 falls -- I'm sorry, I'm having trouble hearing you.</p> <p>8 MS. HALPERN: I said to the extent that</p> <p>9 this is giving advice for the forming of an opinion, I</p> <p>10 think it falls squarely within the deliberative process</p> <p>11 privilege. And also, again, depending on the context in</p> <p>12 which these would have been provided to the Lieutenant</p> <p>13 Governor, I -- I think it still constitutes the</p> <p>14 rendering of legal advice.</p> <p>15 MS. WESTFALL: We take issue with your</p> <p>16 objections to the extent that the Lieutenant Governor</p> <p>17 has both executive and legislative functions, and while</p> <p>18 it may be appropriate, based on the positions that the</p> <p>19 legislators have taken in this case to assert</p> <p>20 legislative privilege when they want to, it would be</p> <p>21 impossible to assert both privileges with regard to both</p> <p>22 legislative and deliberative process with regard to</p> <p>23 these sets of documents.</p> <p>24 MS. HALPERN: I'm not asserting</p> <p>25 legislative, I'm asserting deliberative process.</p>	<p style="text-align: right;">88</p> <p>1 Q. And can you tell me what provisions of 362 made</p> <p>2 it less restrictive than the Indiana and Georgia laws?</p> <p>3 <b>A. Well, I think at least the fact that there were</b></p> <p>4 <b>more acceptable forms of identification. I'm not sure</b></p> <p>5 <b>what other specifics I might have been -- I had in mind</b></p> <p>6 <b>here.</b></p> <p>7 Q. It's fair to say that 362 allowed for the use</p> <p>8 of non-photo ID and the Georgia and Indiana laws did</p> <p>9 not; is that correct?</p> <p>10 <b>A. Correct.</b></p> <p>11 Q. So that would be a major difference between</p> <p>12 Senate Bill 362 and those other bills; is that right?</p> <p>13 <b>A. Correct.</b></p> <p>14 Q. And do you see that in Point Number 2 of</p> <p>15 Reasons to Support Senate Bill 362 as Filed, you</p> <p>16 characterize Senate Bill 362 as a compromised bill?</p> <p>17 <b>A. That's right. And I should say, from looking</b></p> <p>18 <b>at these and the next page, it appears again these are</b></p> <p>19 <b>statements intended to garner support for the bill. And</b></p> <p>20 <b>so, yes, it is characterized as a compromised bill here.</b></p> <p>21 Q. How -- why is it a compromised bill?</p> <p>22 <b>A. Well, I would say that every bill is</b></p> <p>23 <b>compromised. In most cases, in the fact that both photo</b></p> <p>24 <b>and non-photo ID were included is probably one example.</b></p> <p>25 Q. Are there any other facets of 362 that served</p>



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23 (Pages 89 to 92)

<p style="text-align: right;">89</p> <p>1 as the basis of your argument that it was a compromise?</p> <p>2 A. Not offhand. I can look at 362 if you'd</p> <p>3 like. And again I say compromised bill, it's, you know,</p> <p>4 my impression is that provisions, additional forms of ID</p> <p>5 for example, were added to the bill in an attempt to</p> <p>6 garner a compromise. But as I mentioned earlier, every</p> <p>7 Democrat still voted against it.</p> <p>8 Q. How did adding forms of ID constitute a</p> <p>9 compromise, in your mind?</p> <p>10 A. I mean, again, I'm -- looking at this, it's</p> <p>11 possible that specific types of ID within the list were</p> <p>12 suggested by other staff or constituents or Senators, I</p> <p>13 can't recall the specifics, but it's likely related to</p> <p>14 the forms of identification.</p> <p>15 Q. And how -- what -- how was this a compromise</p> <p>16 sort of relative to what other form of the bill it could</p> <p>17 have taken?</p> <p>18 A. Well, the bill, I imagine, could have taken any</p> <p>19 form, and I can't recall specific early forms of the</p> <p>20 bill or that it even existed in a form. It could have</p> <p>21 been discussions with people around the Capitol or</p> <p>22 listening to constituents or reading the newspaper or</p> <p>23 reading Crawford or looking at the other state's laws.</p> <p>24 I mean it could be, again, a product of lots of</p> <p>25 different forms of input.</p>	<p style="text-align: right;">91</p> <p>1 for the use of non-photo ID, that would make it less</p> <p>2 likely to disenfranchise these classes of voters?</p> <p>3 MS. HALPERN: Objection, calls for</p> <p>4 speculation.</p> <p>5 Q. (By Ms. Westfall) You may answer.</p> <p>6 A. It's possible. Again, looking at Crawford, you</p> <p>7 know, the court allowed that forms of voter reform will</p> <p>8 often disenfranchise some voters and, you know, if it's</p> <p>9 some minimal number or negligible number, then that</p> <p>10 might be okay if there are other benefits to the law.</p> <p>11 Q. Turning your attention back to what you wrote</p> <p>12 about Senate Bill 362, is it fair to say that you were</p> <p>13 referring to the use of non-photo ID made it -- the bill</p> <p>14 less likely that it would disenfranchise these forms of</p> <p>15 -- these classes of voters?</p> <p>16 A. I can't be sure. I know there are more forms</p> <p>17 of ID certainly as compared to the current law, but I</p> <p>18 don't know if I was specifically referring to photo or</p> <p>19 non-photo. And again, it says at less than a chance.</p> <p>20 It doesn't -- I don't think it acknowledges that people</p> <p>21 will be disenfranchised. It acknowledges the chance of</p> <p>22 disenfranchisement is some percentage less under this</p> <p>23 bill.</p> <p>24 Q. Is it -- were you intending to suggest there</p> <p>25 was less of a chance of disenfranchising elderly, poor</p>
<p style="text-align: right;">90</p> <p>1 Q. But I guess you characterizes it as a</p> <p>2 compromise. There could have been two. What were the</p> <p>3 two sets of extremes that it was a compromise with?</p> <p>4 A. Again, I can't recall what other forms this</p> <p>5 bill existed in through the process, written or not</p> <p>6 written, so I'm not sure what I was referring to here</p> <p>7 five years ago.</p> <p>8 Q. Do you see that in Bullet 1 you write, "There</p> <p>9 is less chance of disenfranchising elderly, poor or</p> <p>10 minority voters"?</p> <p>11 A. Yes, it says that.</p> <p>12 Q. And how did you determine that Senate Bill 362</p> <p>13 would have that effect?</p> <p>14 A. I don't recall specific reason for</p> <p>15 that. Again, other than this document taken as whole</p> <p>16 with the others are intended to be arguments in favor of</p> <p>17 the bill. And, you know, any election reform has a</p> <p>18 chance of disenfranchising voters, and this is evidently</p> <p>19 less chance of disenfranchising voters.</p> <p>20 Q. And what particular provisions in Senate Bill</p> <p>21 362 made is less likely to disenfranchise these classes</p> <p>22 of voters?</p> <p>23 A. Again, I assume it's related to the forms of</p> <p>24 identification that are acceptable.</p> <p>25 Q. So is it fair to say that given that it allowed</p>	<p style="text-align: right;">92</p> <p>1 or minority voters relative to hard-photo ID bills than</p> <p>2 would only permit the use of photo ID?</p> <p>3 A. I don't recall what I was drawing comparison</p> <p>4 to. Different forms of bills is all I can say.</p> <p>5 Q. So you, sitting here today, you can't tell sort</p> <p>6 of what type of bill this was relative to that you were</p> <p>7 referring to in Point 1?</p> <p>8 A. Presumably it refers to a bill with fewer forms</p> <p>9 of acceptable identification but I don't know the sorts</p> <p>10 or I'm not sure exactly what I had in mind at the time.</p> <p>11 And it may have even been that there were other bills</p> <p>12 filed that session that I was referring to, and I don't</p> <p>13 have those other bills.</p> <p>14 I mean, I know throughout this process of</p> <p>15 voter ID over the last however many years it's been,</p> <p>16 there have been people who want this law to go away and</p> <p>17 there have been people who think this law is not</p> <p>18 restrictive enough. It may have been a reference to</p> <p>19 those people -- or bills filed by those people as</p> <p>20 legislators.</p> <p>21 Q. Is it fair to say that without the provision</p> <p>22 allowing use of non-photo ID in Senate Bill 362, that it</p> <p>23 would increase the likelihood of disenfranchisement for</p> <p>24 these groups?</p> <p>25 MS. HALPERN: Objection, calls for</p>

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24 (Pages 93 to 96)

<p style="text-align: right;">93</p> <p>1 speculation.</p> <p>2 Q. (By Ms. Westfall) You may answer.</p> <p>3 A. It's possible.</p> <p>4 Q. And that's what you were suggesting in the</p> <p>5 talking point; is that correct?</p> <p>6 A. Again, I'm not sure what else I was comparing</p> <p>7 it to. I can't remember what other specific or general</p> <p>8 alternatives I was referring to when I say less of a</p> <p>9 chance. It's also possible I was, you know, giving, you</p> <p>10 know, sort of best case scenarios to the staff to help</p> <p>11 increase passage of the bill.</p> <p>12 Q. But is it fair to say that you had a good faith</p> <p>13 basis and believed the talking points that you were</p> <p>14 writing here --</p> <p>15 A. I would never encourage someone to lie. And</p> <p>16 yeah, I think it's fair to say that this is my good</p> <p>17 faith understanding of what this bill does and does not</p> <p>18 do. Again, I just can't remember what else might have</p> <p>19 been in the -- before the legislature. There may have</p> <p>20 been, you know, bills that were a bit more restrictive</p> <p>21 and that may have been what I was referring to.</p> <p>22 Q. Did you believe that arguing that Senate Bill</p> <p>23 362 would not disenfranchise elderly, poor or minority</p> <p>24 voters would generate support for the bill?</p> <p>25 A. Yes. I don't think anyone in the legislature</p>	<p style="text-align: right;">95</p> <p>1 believed that allowing more forms of ID would decrease</p> <p>2 the bill's discriminatory impact on voters?</p> <p>3 A. Would you repeat?</p> <p>4 Q. Did you write this bullet about preclearance</p> <p>5 because you believed that allowing more forms of ID</p> <p>6 would decrease the bill's discriminatory impact on</p> <p>7 voters?</p> <p>8 A. I believe that this bill, what it says,</p> <p>9 increases the chances of preclearance because it had --</p> <p>10 because of the list of acceptable ID in the bill.</p> <p>11 Q. And the preclearance standard is what?</p> <p>12 A. It was -- under Section 5, preclearance was</p> <p>13 that there was -- the State has the burden or the</p> <p>14 jurisdiction has the burden of proving that there's no</p> <p>15 discriminatory impact or effect on minority populations.</p> <p>16 Q. And here you wrote that Senate Bill 362 is</p> <p>17 something that should be supported because it increases</p> <p>18 chance of federal preclearance because many forms of ID</p> <p>19 are acceptable; is that right?</p> <p>20 A. Right. And again, I don't remember what other</p> <p>21 alternative bills might have been proposed by other</p> <p>22 members of the legislature.</p> <p>23 Q. But certainly Senate Bill 362 was not as</p> <p>24 restrictive as a quote, unquote, hard-photo only Voter</p> <p>25 ID bill, correct?</p>
<p style="text-align: right;">94</p> <p>1 has an interest in disenfranchising elderly, poor or</p> <p>2 minority voters.</p> <p>3 Q. Why do you think that argument needed to be</p> <p>4 made?</p> <p>5 A. I don't know. I think it's just sort of belt</p> <p>6 and suspenders reminding people that this bill will not</p> <p>7 have that effect.</p> <p>8 Q. And is fair to say that at the time you wrote</p> <p>9 these reasons to support Senate Bill 362, that you were</p> <p>10 aware of concerns -- there were concerns out there that</p> <p>11 the bill would adversely impact these groups?</p> <p>12 A. Oh, sure. I mean we knew, you know, Democrats</p> <p>13 in particular opposed this bill before they cast their</p> <p>14 vote, that's true.</p> <p>15 Q. Why did you write that, in Bullet 5, that</p> <p>16 allowing many forms of ID would increase the chance of</p> <p>17 federal preclearance?</p> <p>18 A. I think because it was true. I mean, the</p> <p>19 history of preclearance cases on voter ID showed, you</p> <p>20 know, that the more forms of ID were -- that were</p> <p>21 permissible, permissible, the greater the chances of</p> <p>22 preclearance. It doesn't mean they were necessary to</p> <p>23 get preclearance, but I think it's fair to say they</p> <p>24 increased the chances.</p> <p>25 Q. And did you write that bullet point because you</p>	<p style="text-align: right;">96</p> <p>1 A. It was not as restrictive and it was not as</p> <p>2 secure either.</p> <p>3 Q. But it was -- it definitely allowed a broader</p> <p>4 range --</p> <p>5 A. Yes.</p> <p>6 Q. -- of ID including non-photo ID?</p> <p>7 A. Yes.</p> <p>8 Q. And in your view and you were advocating to</p> <p>9 Ms. McCoy, that a reason to support it was this broad</p> <p>10 set of forms of ID could increase the chances of</p> <p>11 preclearance under Section 5; is that right?</p> <p>12 MS. HALPERN: Object to the form, assumes</p> <p>13 facts not in evidence.</p> <p>14 Q. (By Ms. Westfall) You may answer.</p> <p>15 A. I think the point of this document and some of</p> <p>16 the following documents are for supporters of the bill</p> <p>17 in speaking to opponents of the bill to give them things</p> <p>18 to use to garner more support.</p> <p>19 Q. You also allude to the provisional ballot</p> <p>20 procedure in Bullet 5 and you write, "Provisional ballot</p> <p>21 procedure is less burdensome." What did you mean by</p> <p>22 that?</p> <p>23 A. I do not know.</p> <p>24 Q. Is it less burdensome because the voter did</p> <p>25 not, after the election, have to appear -- if the voter</p>

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25 (Pages 97 to 100)

<p style="text-align: right;">97</p> <p>1 cast a provisional ballot, the voter would not have to 2 go back to the election office to show ID? 3 <b>A. It's possible.</b> 4 Q. And under the Indiana and Georgia laws, the 5 voter would have to come back and show ID if casting a 6 provisional ballot; is that correct? 7 <b>A. I think that's correct.</b> 8 Q. So relative to Indiana and Georgia, Senate Bill 9 362 was less burdensome on voters as to provisional 10 ballots; is that correct? 11 <b>A. I think that's fair. Again, if I could just</b> 12 <b>clarify again: Yes, burdensome. In the earlier</b> 13 <b>deposition you used the word "lenient." You know, it</b> 14 <b>depends on the eye of the beholder, I suppose. But yes,</b> 15 <b>that's generally correct.</b> 16 Q. Turn your attention to the talking points at 17 Texas 00087009. In the second bullet point about 18 protecting Texas voters, was it your view that Senate 19 Bill 362 would accomplish all these goals listed? The 20 five bullets underneath Roman II. 21 <b>A. I hope I believed it would, yes. My memory is</b> 22 <b>that yes, it would in fact. Yes, the threat of fraud is</b> 23 <b>real. Yes, this bill protects Texas voters. And that</b> 24 <b>it attempted some -- it represented some attempt at a</b> 25 <b>compromise. Sure.</b></p>	<p style="text-align: right;">99</p> <p>1 <b>A. I believe that's correct.</b> 2 Q. The provisional ballot voter would not be 3 required to appear at the County election office; is 4 that right? 5 <b>A. That's correct.</b> 6 Q. And under Senate Bill 14, a voter without 7 requisite ID on election day would cast a provisional 8 ballot and then need to return to the election office 9 with qualifying ID in order for their ballot to be 10 counted; is that correct? 11 <b>A. If the reason for the provisional ballot is</b> 12 <b>that they did not have acceptable ID, then yes, they</b> 13 <b>have the opportunity to go confirm that after the voting</b> 14 <b>on election day.</b> 15 Q. And indeed, if they did not confirm, that their 16 ballot would not be counted? 17 <b>A. I believe that's correct.</b> 18 Q. Turning your attention now to Texas 00087011. 19 <b>A. Okay.</b> 20 Q. Actually strike that. 21 Turning your attention to 00087014, the 22 last page of Exhibit 155, Process for Obtaining a Texas 23 Birth Certificate. When Senate Bill 362 was under 24 consideration, did you consider the cost of obtaining 25 photo IDs required under that law -- bill?</p>
<p style="text-align: right;">98</p> <p>1 Q. But you're -- you were arguing that the Senate 2 Bill 362 would accomplish the goals in Roman II; is that 3 correct? 4 <b>A. Yes.</b> 5 Q. And in other words, Senate Bill 362, which 6 allowed for the use of photo and non-photo ID, would 7 accomplish these five goals, correct, under Roman II? 8 <b>A. Correct. It doesn't say that this is the only</b> 9 <b>bill that will protect Texas voters, but yes, it does</b> 10 <b>say this bill will protect Texas voters.</b> 11 Q. We talked a little bit about the provisional 12 ballot process under Senate Bill 362. It would not 13 alter the status quo -- 14 <b>A. I believe --</b> 15 Q. -- of provisional ballot processing, to the 16 best of your recollection? 17 <b>A. I believe that's correct.</b> 18 Q. Under Senate Bill 362, voters without 19 qualifying ID could cast a provisional ballot; isn't 20 that right? 21 <b>A. Yes. As they can today.</b> 22 Q. And the County Ballot Board would then check 23 their records and look at the ballot envelope and 24 determine whether to count based on their own review of 25 records of that ballot; is that correct?</p>	<p style="text-align: right;">100</p> <p>1 <b>A. Looking at this page, it is clear that I</b> 2 <b>considered it. Again, I was not a bill sponsor.</b> 3 Q. Did you -- or your office conduct research on 4 the cost of documents like birth certificates required 5 to obtain an ID? 6 <b>A. I don't recall.</b> 7 Q. Does looking at Texas 00087014 refresh your 8 recollection as to whether you undertook or someone in 9 your office undertook research on the cost of birth 10 certificates in Texas? 11 <b>A. It's clear from this document that birth</b> 12 <b>certificates were considered. Each of the 1, 2, 3 and 4</b> 13 <b>on that page mention birth certificates. I can't recall</b> 14 <b>if I -- I would have been the one that did it, likely,</b> 15 <b>and I can't remember if I looked specifically at cost or</b> 16 <b>if I looked at birth certificates generally.</b> 17 Q. Do you know why you focused on the cost of 18 birth certificates? 19 <b>A. I don't know that I focused on the cost of</b> 20 <b>birth certificates. I think I looked at the</b> 21 <b>availability of birth certificates, looking at this</b> 22 <b>document.</b> 23 Q. Do you know why you looked at the availability 24 of birth certificates as opposed to other forms of 25 identification?</p>

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<p style="text-align: right;">101</p> <p>1 <b>A. I think likely that birth -- I mean, I think</b>  2 <b>birth certificates are one of the more common methods of</b>  3 <b>obtaining other types of identification and so I looked</b>  4 <b>into how one goes about getting copies of birth</b>  5 <b>certificates.</b>  6 <b>Q. And does this document here, Process for</b>  7 <b>Getting Copy Of Texas Birth Certificate, indicate that</b>  8 <b>it will cost \$22 at least to get a birth certificate?</b>  9 <b>A. That's what I put as of 2009. That was -- I</b>  10 <b>assume -- I hope I got that correct.</b>  11 <b>Q. And that to get a birth certificate for \$22 as</b>  12 <b>opposed to 43 or 38, the applicant would have to appear</b>  13 <b>in person at Vital Statistics or another site or have</b>  14 <b>access to the Internet?</b>  15 <b>A. To pay the \$22, they would have to appear in</b>  16 <b>person or have access to the Internet, as you could get</b>  17 <b>at most any library, including in 2009.</b>  18 <b>Q. At the time SB 362 was under consideration, was</b>  19 <b>Janice McCoy also focused on the issue of the cost of</b>  20 <b>obtaining a birth certificate?</b>  21 <b>A. I don't know what Janice was focused on.</b>  22 <b>Q. Did you -- do you recall any conversations with</b>  23 <b>her about that?</b>  24 <b>A. I don't recall, but I sent her this. So if she</b>  25 <b>wasn't before, then presumably she was aware after.</b></p>	<p style="text-align: right;">103</p> <p>1 <b>voter ID.</b>  2 <b>Q. And has it been across several legislative</b>  3 <b>sessions that she's held this interest?</b>  4 <b>A. I think that's correct.</b>  5 <b>Q. Do you know why Ms. Riddle was not selected to</b>  6 <b>carry either Senate Bill 14 or Senate Bill 362 in the</b>  7 <b>House?</b>  8 <b>A. I don't know. That's a decision that's made in</b>  9 <b>the House.</b>  10 <b>Q. Do you know whether it has anything to do with</b>  11 <b>anything that she has said publicly related to</b>  12 <b>immigration?</b>  13 <b>A. I don't know.</b>  14 <b>Q. Was Senate Bill 14 filed in November 2010 in</b>  15 <b>the Senate?</b>  16 <b>A. I don't recall when it was filed.</b>  17 <b>MS. WESTFALL: Could you mark this 156?</b>  18 <b>(Exhibit 156 marked for identification.)</b>  19 <b>MS. WESTFALL: I'm going to designate this</b>  20 <b>portion of the deposition as highly confidential because</b>  21 <b>we are -- I'm again going to use a document that has</b>  22 <b>been produced that has been designated as highly</b>  23 <b>confidential.</b>  24 <b>Q. (By Ms. Westfall) Mr. Hebert --</b>  25 <b>(Brief discussion off the record.)</b></p>
<p style="text-align: right;">102</p> <p>1 <b>MS. HALPERN: Counsel, we've been going</b>  2 <b>another hour and I need a break.</b>  3 <b>MS. WESTFALL: Okay. Certainly. Let's</b>  4 <b>take a break. I'm done with the document. Let's take a</b>  5 <b>break.</b>  6 <b>(Recess 11:26 a.m. to 11:39 a.m.)</b>  7 <b>Q. (By Ms. Westfall) Okay. We were -- you were</b>  8 <b>last discussing testifying about Exhibit Number 155,</b>  9 <b>which had been your testimony about that document had</b>  10 <b>been designated as highly confidential. I want to</b>  11 <b>terminate or suspend that designation now, because I</b>  12 <b>want to ask you questions that don't pertain to that</b>  13 <b>document or other documents that have been designated as</b>  14 <b>highly confidential.</b>  15 <b>A. Okay.</b>  16 <b>Q. I believe you testified that Todd Smith was the</b>  17 <b>house sponsor of Senate Bill 362 in 2009?</b>  18 <b>A. Correct.</b>  19 <b>Q. And who was the House sponsor of Senate Bill</b>  20 <b>14?</b>  21 <b>A. I believe it was Representative Harless. There</b>  22 <b>may have been additional sponsors.</b>  23 <b>Q. Do you recall that Representative Debbie Riddle</b>  24 <b>had strong interest in voter ID?</b>  25 <b>A. I know that she has always had an interest in</b></p>	<p style="text-align: right;">104</p> <p>1 <b>Q. (By Ms. Westfall) So you've been handed what's</b>  2 <b>been marked as 156. Do you recognize what this document</b>  3 <b>is?</b>  4 <b>A. It looks like an e-mail from Janice McCoy to</b>  5 <b>various Senate staff with an attachment of a draft of</b>  6 <b>voter ID bill.</b>  7 <b>MS. WESTFALL: For the record, Exhibit</b>  8 <b>Number 156 is Texas 00090532 through Texas 00090543.</b>  9 <b>Q. (By Ms. Westfall) Do you see that you were</b>  10 <b>copied on the e-mail?</b>  11 <b>A. Yes.</b>  12 <b>Q. Do you see the date of the e-mail?</b>  13 <b>A. Well, it's two e-mails. The first one,</b>  14 <b>November 8th, and the second on November 9th.</b>  15 <b>Q. Did you know before you received this e-mail</b>  16 <b>that Senator Fraser would be filing a Voter ID bill?</b>  17 <b>A. My memory is that he had -- or his staff had</b>  18 <b>already expressed an interest in refiling Voter ID</b>  19 <b>legislation.</b>  20 <b>Q. Senator Fraser had been the sponsor of Senate</b>  21 <b>Bill 362; is that correct?</b>  22 <b>A. Correct.</b>  23 <b>Q. And you knew in advance of this date, November</b>  24 <b>2010, that he would be refiling a Voter ID bill; is that</b>  25 <b>right?</b></p>

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27 (Pages 105 to 108)

<p style="text-align: right;">105</p> <p>1 <b>A. Yes.</b></p> <p>2 MR. WHITLEY: Ms. Westfall, very quickly,</p> <p>3 and I'm sorry for interrupting. Is this -- and I may</p> <p>4 have misheard. Is this portion of the testimony also</p> <p>5 designated --</p> <p>6 MS. WESTFALL: Yes.</p> <p>7 MR. WHITLEY: -- as highly confidential?</p> <p>8 MS. WESTFALL: I -- I hope I designated it</p> <p>9 as highly confidential.</p> <p>10 MR. WHITLEY: And this is a document that</p> <p>11 was produced pursuant to the protective order?</p> <p>12 MS. WESTFALL: Yes.</p> <p>13 MR. WHITLEY: And it was produced as</p> <p>14 production from the last case pursuant to the court's</p> <p>15 order to produce those documents from the last case?</p> <p>16 MS. WESTFALL: Yes.</p> <p>17 MR. WHITLEY: So the defendants are to</p> <p>18 going have the same objection about this document as we</p> <p>19 did before.</p> <p>20 MS. WESTFALL: Yes.</p> <p>21 MR. WHITLEY: Okay.</p> <p>22 MS. WESTFALL: Thank you.</p> <p>23 Q. (By Ms. Westfall) So originally, as indicated</p> <p>24 in the subject line, the Voter ID bill he filed in</p> <p>25 November 2010 received a bill number of Senate Bill 178;</p>	<p style="text-align: right;">107</p> <p>1 <b>A. I might have been. I cannot recall the</b></p> <p>2 <b>specifics of the meeting.</b></p> <p>3 Q. Do you see -- could you review that paragraph</p> <p>4 starting, "After late discussion with Lieutenant</p> <p>5 Governor's office," and let me know when you're done?</p> <p>6 <b>A. Okay.</b></p> <p>7 Q. Could you indicate in your own words what it</p> <p>8 describes?</p> <p>9 <b>A. That someone, in looking at it now, it probably</b></p> <p>10 <b>was me, suggested that having voter registration fraud</b></p> <p>11 <b>provisions and a voter identification bill might present</b></p> <p>12 <b>a two-subject problem, which is a parliamentary --</b></p> <p>13 <b>or constitutional restriction that any one bill can only</b></p> <p>14 <b>contain one subject.</b></p> <p>15 Q. So was it your advice and recommendation that</p> <p>16 Section 18 be removed from the bill?</p> <p>17 <b>A. I assume it was my recommendation.</b></p> <p>18 Q. Could you refer me to the constitutional</p> <p>19 provision that creates the two-subject rule?</p> <p>20 <b>A. I don't know the number.</b></p> <p>21 Q. And again, Section 18 of this previous</p> <p>22 iteration of the bill would have violated the</p> <p>23 two-subject rule for what reason?</p> <p>24 <b>A. It's possible that if a bill contained both</b></p> <p>25 <b>requirements for acceptable Voter ID voting at polls and</b></p>
<p style="text-align: right;">106</p> <p>1 is that right?</p> <p>2 <b>A. I'm not sure. I guess so. According to this</b></p> <p>3 <b>e-mail, yes.</b></p> <p>4 Q. And the bill number was later changed to Senate</p> <p>5 Bill 14; is that correct?</p> <p>6 <b>A. Correct. Again, I'm not sure that it's the</b></p> <p>7 <b>exact same bill, but that might be correct.</b></p> <p>8 Q. Assuming it is the same bill, do you know why</p> <p>9 the change in numbering was made?</p> <p>10 <b>A. I don't know. Typically, low bill numbers are</b></p> <p>11 <b>priorities of the Lieutenant Governor and the Senate.</b></p> <p>12 Q. Do you know whether Senator Fraser was asked to</p> <p>13 refile so that he could be designated with a low bill</p> <p>14 number?</p> <p>15 <b>A. I don't know.</b></p> <p>16 Q. Do you know whether Mr. Dewhurst asked him to</p> <p>17 do that?</p> <p>18 <b>A. I don't know.</b></p> <p>19 Q. Do you see that the e-mail, the second e-mail</p> <p>20 dated November 8th on Page 90532, alludes to a</p> <p>21 discussion with the Lieutenant Governor's office --</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. -- in Paragraph 2?</p> <p>24 <b>A. (Witness nods head yes.)</b></p> <p>25 Q. Were you part of that meeting?</p>	<p style="text-align: right;">108</p> <p>1 <b>provisions relating to punishment of voter registration</b></p> <p>2 <b>fraud, that a House parliamentary or a Senate</b></p> <p>3 <b>parliamentary or a court after the fact could decide</b></p> <p>4 <b>that those two things were not one subject. And to, you</b></p> <p>5 <b>know, to avoid that concern, it was probably safer to</b></p> <p>6 <b>remove that provision.</b></p> <p>7 Q. Do you know whether any other changes were made</p> <p>8 to the draft besides the one you just testified to as a</p> <p>9 result of your meeting with Ms. McCoy?</p> <p>10 <b>A. I don't recall.</b></p> <p>11 Q. Turning to the bill itself --</p> <p>12 <b>A. Can I?</b></p> <p>13 Q. Go ahead.</p> <p>14 <b>A. To clarify, I don't know that if it was even a</b></p> <p>15 <b>meeting. It says a discussion. It may have been a</b></p> <p>16 <b>phone call.</b></p> <p>17 Q. Do you recall whether any other changes to the</p> <p>18 bill occurred during that discussion?</p> <p>19 <b>A. I don't recall.</b></p> <p>20 Q. Turning to the bill attached to Exhibit 156, it</p> <p>21 appears -- if you could take a look at the bill, that</p> <p>22 there was no exemption from the ID requirements for</p> <p>23 voters over the age of 70; is that correct?</p> <p>24 <b>A. I do not see an exemption.</b></p> <p>25 MS. WESTFALL: Could you mark this</p>



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28 (Pages 109 to 112)

<p style="text-align: right;">109</p> <p>1 document as Exhibit 157?</p> <p>2 (Exhibit 157 marked for identification.)</p> <p>3 Q. (By Ms. Westfall) You've been handed what's</p> <p>4 been marked as Exhibit 157. Do you recognize this</p> <p>5 document?</p> <p>6 A. It's an e-mail from myself to a Senate staffer</p> <p>7 relating to Voter ID bill.</p> <p>8 Q. Preliminary question: Why did you copy</p> <p>9 yourself, Bryan Hebert to Bryan Hebert, this e-mail?</p> <p>10 A. It's possible I did that just as a sort of</p> <p>11 bookkeeping for myself to put it into one folder in my</p> <p>12 archive system. But you can see at the bottom it's got</p> <p>13 my deputy general counsel signature, which would only</p> <p>14 have come from my state account.</p> <p>15 Q. Thank you. Who is Noe Barrios?</p> <p>16 A. Noe Barrios is I believe now chief of staff for</p> <p>17 Senator Estes. I'm not sure what his title was in 2011.</p> <p>18 Q. What is the party affiliation of Senator Estes?</p> <p>19 A. He's a Republican.</p> <p>20 Q. What were the concerns about SB 14's compliance</p> <p>21 with the Voting Rights Act that are expressed by</p> <p>22 Mr. Barrios?</p> <p>23 A. I don't know. It says here that -- it looks</p> <p>24 like Blaine Brunson, the chief of staff for the</p> <p>25 Lieutenant Governor, had a conversation with Senator</p>	<p style="text-align: right;">111</p> <p>1 Q. So how did you believe that discussing the</p> <p>2 Crawford case would be responsive to the concerns of</p> <p>3 Mr. Barrios and his boss?</p> <p>4 A. I don't remember for sure today. I would say</p> <p>5 that if the Supreme Court approved an election change or</p> <p>6 election program in a state, that's certainly better</p> <p>7 than if they did not approve it in terms of whether it</p> <p>8 would pass preclearance.</p> <p>9 Q. So in measures required to offset burdens on</p> <p>10 voters, do you see that at Roman II?</p> <p>11 A. Yes.</p> <p>12 Q. You mentioned availability of provisional</p> <p>13 ballots and absentee ballots, correct?</p> <p>14 A. Correct.</p> <p>15 Q. And under Senate Bill 14, if a voter casts</p> <p>16 provisional ballot, that voter for -- for not -- for</p> <p>17 lack of acceptable photo ID, the voter would have to</p> <p>18 return with acceptable photo ID in order for that ballot</p> <p>19 to be counted, correct?</p> <p>20 A. Correct.</p> <p>21 Q. So how does the availability of provisional</p> <p>22 ballots under Senate Bill 14 offset burden to voters?</p> <p>23 A. Because the voter is not turned away outright.</p> <p>24 If they show up at the polls with no ID, they're not</p> <p>25 just told too bad. They're allowed to cast a</p>
<p style="text-align: right;">110</p> <p>1 Estes, and in that conversation concerns were raised. I</p> <p>2 don't recall the specific -- of whether Blaine relayed</p> <p>3 the specifics of those concerns or whether he just said</p> <p>4 Senator Estes wants to make sure this passes and is</p> <p>5 precleared.</p> <p>6 Q. So you provided information about Crawford and</p> <p>7 the Indiana law in response to these concerns, correct?</p> <p>8 A. That looks to be correct.</p> <p>9 Q. Why did you provide information about Indiana's</p> <p>10 photo ID law in response to concerns about Senate Bill</p> <p>11 14 under the Voting Rights Act?</p> <p>12 A. I think it was -- looks like it was a separate</p> <p>13 point, I said, you know, the good news is that U.S.</p> <p>14 Supreme Court has upheld a similar law in Indiana, and I</p> <p>15 don't believe -- you know, I think the Crawford decision</p> <p>16 is relevant to the discussion of whether Voter ID laws</p> <p>17 will be upheld. It's not a preclearance process, but it</p> <p>18 is relevant.</p> <p>19 Q. And Crawford would be relevant to</p> <p>20 constitutional challenges against Voter ID; is that</p> <p>21 correct?</p> <p>22 A. Correct.</p> <p>23 Q. But Crawford is not -- doesn't -- Crawford was</p> <p>24 not a statutory.</p> <p>25 A. It's not a Section 5 ruling.</p>	<p style="text-align: right;">112</p> <p>1 provisional ballot, and they're further given an</p> <p>2 opportunity to appear with acceptable ID and have that</p> <p>3 the ballot counted.</p> <p>4 Q. So under -- are you familiar with the Help</p> <p>5 America Vote Act?</p> <p>6 A. Yes.</p> <p>7 Q. And doesn't the Help America Vote Act require</p> <p>8 that no voter, under any circumstance, can be turned</p> <p>9 away from the polls and is permitted to vote a</p> <p>10 provisional ballot?</p> <p>11 A. I'll take your word for it.</p> <p>12 Q. So how does -- assuming that to be the case,</p> <p>13 how does Senate Bill 14 offset burden to voters if it's</p> <p>14 already provided for in federal law?</p> <p>15 A. I assume by -- at least by providing a clear</p> <p>16 mechanism and by ensuring that the secure measures in</p> <p>17 place at the polls are continued through the provisional</p> <p>18 ballot process and providing guidance through election</p> <p>19 workers and election clerks on how to handle such</p> <p>20 requests so that they're not mishandled.</p> <p>21 Q. And on -- where you have Roman III, measures</p> <p>22 recommended to offset burdens on voters, you mention an</p> <p>23 exception for certain elderly voters. Why did you raise</p> <p>24 the issue of elderly voters in response to concerns</p> <p>25 about the Voting Rights Act?</p>

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29 (Pages 113 to 116)

<p style="text-align: right;">113</p> <p>1 <b>A. I can't recall.</b></p> <p>2 Q. And elderly voters are not the protected class</p> <p>3 of voters that are at issue in the Voting Rights Act,</p> <p>4 correct?</p> <p>5 <b>A. Correct. Although, again, if I'm referencing</b></p> <p>6 <b>constitutional law, making sure all classes of voters</b></p> <p>7 <b>are treated the same way would increase the chances of</b></p> <p>8 <b>success before a court.</b></p> <p>9 Q. So it's more of an equal protection concern and</p> <p>10 less of a Voting Rights Act concern; is that correct?</p> <p>11 <b>A. Possibly.</b></p> <p>12 Q. Insofar as -- well, okay. Did Mr. Barrios</p> <p>13 respond to your e-mail?</p> <p>14 <b>A. I don't recall.</b></p> <p>15 MS. WESTFALL: I'm going to terminate the</p> <p>16 highly confidential designation right now.</p> <p>17 Q. (By Ms. Westfall) Did you hear of any other</p> <p>18 concerns about Senate Bill 14's compliance with the</p> <p>19 Voting Rights Act at this period in time?</p> <p>20 <b>A. In --</b></p> <p>21 MS. HALPERN: Objection, vague.</p> <p>22 <b>A. In January of 2011, we would have been in</b></p> <p>23 <b>session, and I assume I did hear objections from</b></p> <p>24 <b>opponents of the bill.</b></p> <p>25 Q. (By Ms. Westfall) Were there any concerns</p>	<p style="text-align: right;">115</p> <p>1 <b>A. Sure.</b></p> <p>2 Q. And sitting here today, do you recall anything</p> <p>3 about that conversation?</p> <p>4 <b>A. I don't. It's three years ago, two years since</b></p> <p>5 <b>my last deposition.</b></p> <p>6 MS. WESTFALL: Counsel, let's go off the</p> <p>7 record for a second.</p> <p>8 (Brief discussion off the record.)</p> <p>9 (Exhibit 158 marked for identification.)</p> <p>10 Q. (By Ms. Westfall) You've been handed what's</p> <p>11 been marked as Exhibit 158. It is TX0003456.</p> <p>12 MS. HALPERN: Counsel, if you don't mind</p> <p>13 some unsolicited advice, let me suggest that rather than</p> <p>14 discussing the contents of this, which would require you</p> <p>15 to make this portion of the deposition confidential,</p> <p>16 without describing it, why don't you just ask him if</p> <p>17 he --</p> <p>18 MS. WESTFALL: Sure.</p> <p>19 Q. (By Ms. Westfall) Do you know what this is?</p> <p>20 <b>A. It looks like talking points for DHD, which</b></p> <p>21 <b>would be David Dewhurst, Call to Members Voter ID</b></p> <p>22 <b>Timeline and Procedures.</b></p> <p>23 Q. Did you draft this?</p> <p>24 <b>A. I don't think I did.</b></p> <p>25 Q. Okay.</p>
<p style="text-align: right;">114</p> <p>1 about SB 14's compliance with the Voting Rights Act from</p> <p>2 senators who later voted for the bill?</p> <p>3 <b>A. I don't recall. It's three years ago.</b></p> <p>4 Q. Governor Perry designated the issue of Voter ID</p> <p>5 as emergency legislation, correct?</p> <p>6 <b>A. I think that's correct.</b></p> <p>7 Q. And you had a conversation with Janice McCoy</p> <p>8 about the designation of Voter ID as emergency</p> <p>9 legislation, correct?</p> <p>10 <b>A. I may have. I don't remember specific</b></p> <p>11 <b>conversation about that designation. Certainly after</b></p> <p>12 <b>the fact we would have talked about it.</b></p> <p>13 Q. But you don't recall what was said at that</p> <p>14 conversation?</p> <p>15 <b>A. I don't recall.</b></p> <p>16 Q. Just the existence of the conversation?</p> <p>17 <b>A. I'm not even sure that we actually had that</b></p> <p>18 <b>conversation. I would not be surprised if we talked</b></p> <p>19 <b>about the emergency designation after it happened.</b></p> <p>20 Q. I'll represent to you that in your prior</p> <p>21 deposition you testified to the existence of a</p> <p>22 conversation --</p> <p>23 <b>A. Okay.</b></p> <p>24 Q. -- with Ms. McCoy about the emergency</p> <p>25 designation.</p>	<p style="text-align: right;">116</p> <p>1 <b>A. And I -- I don't remember drafting it for sure,</b></p> <p>2 <b>but just as a practical matter, the ID in the first</b></p> <p>3 <b>line, I would never have done it lower case.</b></p> <p>4 Q. Fair point.</p> <p>5 <b>A. And this also seems more sort of personal in</b></p> <p>6 <b>nature. It's not the style I would have written in</b></p> <p>7 <b>either.</b></p> <p>8 Q. Do you know whether -- putting aside document 1</p> <p>9 -- the Exhibit 158, do you know whether Mr. Dewhurst</p> <p>10 called all members about consideration of Senate Bill</p> <p>11 14?</p> <p>12 <b>A. I don't recall. I don't -- I don't remember</b></p> <p>13 <b>any firsthand knowledge for sure.</b></p> <p>14 Q. Do you have any idea who drafted this document?</p> <p>15 <b>A. I don't.</b></p> <p>16 Q. Do you think Mr. Dewhurst himself drafted this</p> <p>17 document?</p> <p>18 <b>A. I don't know.</b></p> <p>19 Q. Would Frank Battle or Julia Rathgeber or Blaine</p> <p>20 Brunson had drafted this document?</p> <p>21 <b>A. In 2011, Frank Battle would have been -- let's</b></p> <p>22 <b>see if I remember -- I don't know. I don't know. It</b></p> <p>23 <b>could have been any of them. It could have been the</b></p> <p>24 <b>Lieutenant Governor himself, but that seems unlikely.</b></p> <p>25 <b>Q. Do you know why Mr. Dewhurst would have</b></p>

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<p style="text-align: right;">117</p> <p>1 indicated to members that he wanted to move this bill, 2 that is Senate Bill 14, as expeditiously as possible? 3 <b>A. I don't know. Considering that Governor Perry</b> 4 <b>designated it an emergency, that might be one reason.</b> 5 Q. Do you know why he would have wanted to get 6 consideration of Voter ID out of the way before 7 considering some of the other issues mentioned in this 8 document such as budget, imminent domain, border 9 security and, quote, "other pressing issues," end quote? 10 <b>A. Again --</b> 11 <b>MS. HALPERN: Objection, calls for</b> 12 <b>speculation.</b> 13 <b>A. I don't know. Again, I would guess that since</b> 14 <b>the Governor considered it an emergency, that that means</b> 15 <b>it warranted some attention.</b> 16 Q. (By Ms. Westfall) Do you see that these 17 talking points indicate at Exhibit 158 that the Senate 18 would meet the following week as long as it took to get 19 Voter ID done, in essence? 20 <b>A. Yes.</b> 21 Q. Do you know why those steps were taken with 22 regard to this bill? 23 <b>A. I don't know.</b> 24 Q. Do you know why, other than what you just 25 testified to in terms of emergency designation, it was</p>	<p style="text-align: right;">119</p> <p>1 <b>A. My memory is there have been a number of</b> 2 <b>emergency issues over those years. I cannot recall</b> 3 <b>which specific bills were passed during the first week</b> 4 <b>or the first month or the first 60 days of session.</b> 5 Q. Do you know what subject matter they were? 6 <b>A. You know, I can't remember. I know -- I should</b> 7 <b>know, but I know there have been a number of them that</b> 8 <b>have been emergencies, but I can't remember. And I</b> 9 <b>should also say that it's possible for the Senate to</b> 10 <b>vote to suspend those rules to do so, and I can't</b> 11 <b>remember if that has happened or not.</b> 12 Q. Do you see in terms of the date of this 13 document that it starts off, "Today Governor Perry 14 designated Voter ID as an emergency"? 15 <b>A. Yes.</b> 16 Q. Does that suggest to you a certain date when 17 this document was drafted? 18 <b>A. Probably the date that the designation was</b> 19 <b>made. I don't know when this was distributed or when he</b> 20 <b>might have met with the senators as indicated here.</b> 21 Q. Do you recall that Governor Perry designated 22 Voter ID as an emergency on January 20 of 2011? 23 <b>A. I don't recall the date, but I assume that's</b> 24 <b>correct.</b> 25 Q. Would it be in the legislative history on</p>
<p style="text-align: right;">118</p> <p>1 moved so expeditiously through the Senate? 2 <b>A. I don't know. Again, I could guess that given</b> 3 <b>the vocal opposition from Democrats, that he expected a</b> 4 <b>fight. And as I said earlier, the earlier in the</b> 5 <b>process you start on controversial or contentious bills,</b> 6 <b>the better, in terms of getting it passed. It may have</b> 7 <b>been some other reason. Maybe the Speaker requested it</b> 8 <b>or maybe the Governor requested it. I don't know.</b> 9 Q. Are you aware of other kind of substantive 10 bills that were pushed through the first week of session 11 in the January, to your knowledge? 12 <b>A. I don't recall what else might have been an</b> 13 <b>emergency. The Senate rules and the Legislature's rules</b> 14 <b>prohibit consideration of certain types of bills during</b> 15 <b>certain points in the Senate. It may have been that</b> 16 <b>this was the only bill we could consider that early in</b> 17 <b>session. I don't know. And I don't know when this was</b> 18 <b>drafted exactly either.</b> 19 Q. Putting aside 2011, since you were in the 20 Senate working as a staff person since 2007; is that 21 correct, 2007? 22 <b>A. Sadly, yes.</b> 23 Q. Are you aware of any other substantive bills 24 that were pushed through the Senate in the first week of 25 session in January?</p>	<p style="text-align: right;">120</p> <p>1 Senate Bill 14 or no? 2 <b>A. The emergency designation, I don't believe</b> 3 <b>would be. It would be a proclamation from the</b> 4 <b>Governor's office and would likely have been read on the</b> 5 <b>floor of the Senate and therefore be in the Senate</b> 6 <b>Journal.</b> 7 Q. Do you see that on document Exhibit Number 158, 8 it indicates that it would be in the Senate's best 9 interest to complete work on Voter ID before focusing on 10 these other issues listed? 11 <b>A. Yes.</b> 12 Q. Four paragraphs down. 13 <b>A. It says that --</b> 14 <b>MS. HALPERN: I'm sorry. I should have</b> 15 <b>interposed a running objection, and I apologize. I said</b> 16 <b>it was okay for you to ask him if he authored it. He</b> 17 <b>says he didn't. And now we have a whole line of</b> 18 <b>continuing questions about this highly confidential</b> 19 <b>document. So with your indulgence, because I think</b> 20 <b>we're having bilateral cooperation here, I want to go</b> 21 <b>back and assert a running objection starting from every</b> 22 <b>question after he says he didn't author this.</b> 23 <b>MS. WESTFALL: Certainly. Certainly.</b> 24 Q. (By Ms. Westfall) Are you aware of any facts, 25 factual support, need for such prompt and expeditious</p>

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<p style="text-align: right;">121</p> <p>1 consideration of Senate Bill 14 before other legislative</p> <p>2 priorities?</p> <p>3 <b>A. I'm not sure what the Governor considered in</b></p> <p>4 <b>making the designation.</b></p> <p>5 <b>Q. But the sole -- your sole -- your testimony is</b></p> <p>6 <b>that it was solely -- your understanding was it was the</b></p> <p>7 <b>Governor's designation of this bill as an emergency is</b></p> <p>8 <b>the sole factual support for why it was pushed so</b></p> <p>9 <b>expeditiously in the Senate in January --</b></p> <p>10 <b>MS. HALPERN: Objection.</b></p> <p>11 <b>Q. (By Ms. Westfall) -- is that correct?</b></p> <p>12 <b>MS. HALPERN: Assumes facts not in</b></p> <p>13 <b>evidence.</b></p> <p>14 <b>Q. (By Ms. Westfall) You may answer.</b></p> <p>15 <b>A. I don't know is the short answer. I know this</b></p> <p>16 <b>was a priority of Lieutenant Governor Dewhurst and of</b></p> <p>17 <b>many senators. And it was clearly deemed an emergency</b></p> <p>18 <b>by the Governor. And all that together seems enough to</b></p> <p>19 <b>call expeditious -- expediting the process.</b></p> <p>20 <b>Q. Other than what you just testified to, there</b></p> <p>21 <b>are no other facts that warranted such prompt</b></p> <p>22 <b>consideration of Senate Bill 14; is that right?</b></p> <p>23 <b>A. Again, the same that I mentioned earlier, the</b></p> <p>24 <b>desire to actually have it passed this time. This was</b></p> <p>25 <b>now the third or fourth or fifth session that it had</b></p>	<p style="text-align: right;">123</p> <p>1 <b>document?</b></p> <p>2 <b>A. It looks like a press release from the</b></p> <p>3 <b>Lieutenant Governor's office.</b></p> <p>4 <b>Q. What is it concerning?</b></p> <p>5 <b>A. The Governor Perry emergency call.</b></p> <p>6 <b>Q. Do you see the date of the release?</b></p> <p>7 <b>A. Yes.</b></p> <p>8 <b>Q. What is the date?</b></p> <p>9 <b>A. January 20, 2010.</b></p> <p>10 <b>Q. And when was this -- what does it refer to in</b></p> <p>11 <b>terms of when the emergency designation was made?</b></p> <p>12 <b>A. "Today."</b></p> <p>13 <b>Q. So, therefore, the emergency designation was</b></p> <p>14 <b>January 20th; is that correct?</b></p> <p>15 <b>A. I assume that's true.</b></p> <p>16 <b>Q. Do you see that -- turning your attention to</b></p> <p>17 <b>the last paragraph of this release, do you see that it</b></p> <p>18 <b>refers to the need to protect one man, one vote?</b></p> <p>19 <b>A. It says, "One person, one vote," yes.</b></p> <p>20 <b>Q. One person, one vote. Do you know what was</b></p> <p>21 <b>meant by that?</b></p> <p>22 <b>A. I mean, I just -- generally that each vote</b></p> <p>23 <b>shall count if cast by an eligible voter and not be</b></p> <p>24 <b>offset by a vote cast by an ineligible voter.</b></p> <p>25 <b>Q. Was there a threat to the principle of one</b></p>
<p style="text-align: right;">122</p> <p>1 <b>been attempted to be passed. And on multiple occasions,</b></p> <p>2 <b>had run out of time or procedural obstacles had been</b></p> <p>3 <b>placed in its way that stopped it. So if nothing else,</b></p> <p>4 <b>to get it done.</b></p> <p>5 <b>MS. WESTFALL: I'm going to terminate the</b></p> <p>6 <b>highly confidential designation right now.</b></p> <p>7 <b>MS. HALPERN: When do you plan to stop for</b></p> <p>8 <b>lunch?</b></p> <p>9 <b>MS. WESTFALL: I'm open.</b></p> <p>10 <b>MS. HALPERN: Well, I'm assuming you've</b></p> <p>11 <b>got hours and hours to go before you sleep?</b></p> <p>12 <b>MS. WESTFALL: I have hours and hours to</b></p> <p>13 <b>go before I sleep. I have -- I have a bunch of short</b></p> <p>14 <b>exhibits to go through, so we're going to be here all</b></p> <p>15 <b>day as you -- it's 12 noon.</b></p> <p>16 <b>MS. HALPERN: What do you want to do?</b></p> <p>17 <b>MS. WESTFALL: I'm open.</b></p> <p>18 <b>THE WITNESS: Maybe another half hour and</b></p> <p>19 <b>then break?</b></p> <p>20 <b>MS. WESTFALL: Okay. 12:30 is a good time</b></p> <p>21 <b>for lunch. Okay. I'm going to -- could you please mark</b></p> <p>22 <b>this?</b></p> <p>23 <b>(Exhibit 159 marked for identification.)</b></p> <p>24 <b>Q. (By Ms. Westfall) You've just been handed</b></p> <p>25 <b>what's been marked as 159. Do you recognize this</b></p>	<p style="text-align: right;">124</p> <p>1 person, one vote, that Voter ID was intended to remedy?</p> <p>2 <b>A. Yes.</b></p> <p>3 <b>Q. Can you explain that?</b></p> <p>4 <b>A. In my judgment, as I just said, if an eligible</b></p> <p>5 <b>voter casts a vote, that vote is counted. If an</b></p> <p>6 <b>ineligible voter casts a fraudulent vote, that has the</b></p> <p>7 <b>effect of eliminating or offsetting an eligible vote,</b></p> <p>8 <b>and therefore, is a threat to the principle of one</b></p> <p>9 <b>person, one vote.</b></p> <p>10 <b>Q. And what was the basis for the need of ensuring</b></p> <p>11 <b>one person, one vote through Voter ID, other than what</b></p> <p>12 <b>you've just testified to?</b></p> <p>13 <b>A. I think that's enough. I think there's lots of</b></p> <p>14 <b>--</b></p> <p>15 <b>Q. Principle.</b></p> <p>16 <b>A. There are lots of ways to protect that</b></p> <p>17 <b>principle in Voter ID. This Voter ID legislation was</b></p> <p>18 <b>one.</b></p> <p>19 <b>Q. And do you see it alludes to uphold the</b></p> <p>20 <b>integrity of elections?</b></p> <p>21 <b>A. Yes.</b></p> <p>22 <b>Q. Why was there a need to uphold the integrity of</b></p> <p>23 <b>elections through Voter ID?</b></p> <p>24 <b>A. Again, I think accounts of various types of</b></p> <p>25 <b>fraud have been well-documented in Texas and other</b></p>

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<p style="text-align: right;">125</p> <p>1 jurisdictions, and this attempt to decrease that fraud 2 has the effect of upholding the integrity of our 3 elections so that you can be sure that the person who 4 got the most eligible votes is the person that was 5 elected. 6 Q. Were there indications that existing Voter ID 7 law in Texas had failed to protect the integrity of the 8 elections? 9 A. I'm sure there were examples that I -- 10 specifics of which escape me now, but yes, like I said, 11 there's been examples of fraud throughout Texas's 12 history. This was one -- intended to be one step 13 towards curbing that fraud and curbing fraud in general. 14 Q. And by voter fraud, you mean voter fraud 15 generally and not limited to in-person voter 16 impersonation; is that correct? 17 A. The bulk of this voter -- SB 14, as I saw it, 18 was intended to stop in-person voter fraud, but as I 19 discussed earlier, I think the potential impact of that 20 is much broader. 21 MS. WESTFALL: Can you mark this? 22 (Exhibit 160 marked for identification.) 23 Q. (By Ms. Westfall) You've been handed what's 24 been marked as Exhibit 160. Do you recognize this 25 document?</p>	<p style="text-align: right;">127</p> <p>1 role because he was the chair of the State Affairs 2 Committee, which had jurisdiction over election-related 3 bills? 4 A. I don't know the reason he was chosen. I think 5 it was a good choice because in addition to his 6 experience with the election procedure, he's a 7 long-serving member of the Senate, familiar with Senate 8 rules and procedure, and just frankly, an even-handed 9 temperament and trusted by all members of the Senate. 10 Q. Is there a reason why Senator Fraser was not 11 selected for that role? 12 A. Likely because he was the sponsor of the bill 13 in question. 14 Q. I see. So he would appear as sort of a witness 15 or a resource? 16 A. Correct. I think -- well, the way it would 17 work is a senator would be appointed to preside, someone 18 other than Lieutenant Governor. You would not have the 19 sponsor of the bill presiding. Even in a regular 20 committee process, the chair of the committee would hand 21 the gavel off to the vice chair, someone else to preside 22 if a bill of the chair came before the committee. So in 23 this case, Senator Fraser was almost certainly not 24 chosen because he was the sponsor of Senate Bill 14. 25 MS. WESTFALL: Would you please mark this?</p>
<p style="text-align: right;">126</p> <p>1 A. It is a letter to Senator Birdwell, and my 2 recollection is that every senator got a similar letter 3 stating Lieutenant Governor Dewhurst's intent to 4 recognize Senator Duncan, to resolve the Senate into 5 Committee of the Whole to consider SB 14 relating to 6 Voter ID, to appoint Senator Duncan as chair of that 7 committee, and then some other time line procedural 8 issues. 9 Q. Did you draft this letter? 10 A. No. 11 Q. Who drafted this letter? 12 A. I don't know. 13 Q. What did the initials at the bottom mean? 14 A. DD would likely be David Dewhurst, and EG would 15 likely be Elaine Gonzalez, his assistant. 16 Q. Why did Senator Duncan make a motion to resolve 17 the Senate to the Committee of the Whole? 18 A. I don't know why he did what he did. 19 Procedurally, a senator has to make the motion to 20 resolve it into a Committee of the Whole. 21 Q. And Mr. Dewhurst himself was not able to do 22 that; is that correct? 23 A. Correct. I'm not aware of a procedure where 24 the Lieutenant Governor can do so. 25 Q. Was it -- was Senator Duncan selected for this</p>	<p style="text-align: right;">128</p> <p>1 (Exhibit 161 marked for identification.) 2 MS. WESTFALL: Go off the record one 3 second. 4 (Brief discussion off the record.) 5 MS. WESTFALL: Back on the record. 6 Q. (By Ms. Westfall) You've been handed Exhibit 7 161. Do you recognize this document? 8 A. Appears to be copy of some version of SB 14. 9 Q. Do you see the date at the bottom? 10 A. Looks like the date January 12, 2011. 11 Q. Can you refer yourself back to that other 12 exhibit and of the chronology of Senate Bill 14? 13 A. Actually I don't have that. I have the 14 chronology of 362. 15 Q. All right. Strike that. We'll go back to that 16 a later time. 17 So the bill gets filed in November 2010, 18 correct? And then are there changes to the bill between 19 its filing in November 2010 and January 2012 -- 2011? 20 A. Well, we know there was at least -- again, 21 without knowing which versions were officially filed, 22 referring back to the earlier e-mail from Janice McCoy 23 to Senate staffers, it looks like she made one change 24 that she referenced there, deleted Section 18, and made 25 some changes -- or didn't make changes to Section 14. I</p>



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<p style="text-align: right;">129</p> <p>1 don't know what changes may have been made between that 2 version and that attachment and this without looking 3 through it. And I don't know which was filed and which 4 was not filed.</p> <p>5 Q. Is it possible that you could prefile a bill in 6 November of 2010 and then continue working on different 7 iterations and file another version in January 2011?</p> <p>8 A. Yes. A bill can be changed by the author as 9 often as they like.</p> <p>10 Q. Do you recall that -- without looking at the 11 documents, do you recall from your memory whether 12 changes were made to the bill during that period of 13 time?</p> <p>14 A. I don't recall.</p> <p>15 Q. And you were involved in developing Senate Bill 16 14; is that right?</p> <p>17 A. I had conversations with Janice McCoy regarding 18 the bill, and I had been working on it previous 19 sessions. Yes, I think it's fair to say I was aware, 20 and I was certainly -- and for my office's purposes, in 21 charge of analyzing and tracking the bill.</p> <p>22 Q. Was Ms. Jennifer Fagan also involved in the 23 drafting process or was it chiefly you and Ms. McCoy?</p> <p>24 A. I can't remember the extent to Jennifer Fagan 25 was involved. And I should say the development. The</p>	<p style="text-align: right;">131</p> <p>1 states where Voter ID was implemented, Indiana and 2 Georgia and Louisiana. I would have looked through 3 testimony provided during the course over the last 4 previous few sessions on this -- on this concept. I 5 don't know what else. I imagine I would have drawn from 6 a lot of sources. But most importantly, if I was asked 7 to draft something, I would have just done what I was 8 asked to draft as a sort of administrative matter.</p> <p>9 Q. (By Ms. Westfall) Kind of a technical matter?</p> <p>10 A. Correct.</p> <p>11 Q. And this would have been at the instruction of 12 Mr. Dewhurst?</p> <p>13 A. Unlikely.</p> <p>14 Q. At whose instruction?</p> <p>15 A. More likely at the instruction of Janice, whose 16 boss was the sponsor. And as far as I know, Janice does 17 not have experience drafting bills herself, so she may 18 have asked me to help make sure the formatting was 19 correct and so forth.</p> <p>20 Q. I see. Did you, besides the sources that you 21 just testified to, did you look at any model Voter ID 22 legislation from interest groups?</p> <p>23 A. No. I don't recall looking at it.</p> <p>24 Q. Did you or the Lieutenant Governor exchange 25 drafts of Senate Bill 14 with anybody during this</p>
<p style="text-align: right;">130</p> <p>1 drafting, I mean, for example, on this Exhibit 161, 2 there's a number at the bottom which I think indicates 3 it came from Senate Engrossing and Enrolling, which is 4 an agency within the Senate to draft bills. So I don't 5 know how much input Jennifer Fagan or myself had on this 6 particular draft or the bill as a whole.</p> <p>7 Q. Were there other staff involved besides you, 8 Ms. McCoy and Ms. Fagan in drafting Senate Bill -- 9 developing Senate Bill 14?</p> <p>10 A. I don't recall. Again, I think given 11 Ms. McCoy's earlier e-mail, there's a list of Senate 12 staff. I don't know to the extent to which any of those 13 people were or were not involved or whether people not 14 on that list were involved.</p> <p>15 Q. Were you involved in drafting Senate Bill 14?</p> <p>16 A. I don't recall. I may have. I have a 17 background of drafting bills. It's possible that I may 18 have helped with the language, sure.</p> <p>19 Q. Do you recall what sources you consulted, if 20 any, to draft Senate Bill 14?</p> <p>21 MS. HALPERN: Objection, assumes facts not 22 in evidence.</p> <p>23 A. To the extent I did draft or help with drafting 24 language, I assume I would have looked at previous 25 versions of this bill. I would have looked to other</p>	<p style="text-align: right;">132</p> <p>1 period?</p> <p>2 A. I don't know what he did. To the extent I 3 exchanged drafts or -- does that include reviewing 4 drafts? It likely would have only have been with Janice 5 McCoy and possibly with Jennifer Fagan. I don't recall 6 forwarding drafts to other people. I may have, but I 7 don't recall.</p> <p>8 Q. Did you review any studies about the impact of 9 Voter ID in other states or any implications of Voter ID 10 in other states in drafting Senate Bill 14?</p> <p>11 A. To the extent I drafted portions of this bill 12 or didn't draft portions of the bill, I'm not sure. I 13 know, generally, I was aware of studies related to voter 14 turnout and so forth in Voter ID states.</p> <p>15 Q. And by Voter ID states, you're referring to 16 Georgia and Indiana?</p> <p>17 A. Indiana and Georgia, and there seems like there 18 may have been some others in 2011, Louisiana or -- and 19 maybe some other jurisdictions.</p> <p>20 Q. Do you recall the particular studies you looked 21 at?</p> <p>22 A. I don't remember the names of the studies. I 23 remember the gist being that turnout had not been 24 adversely impacted in the wake of Voter ID legislation.</p> <p>25 Q. How did you come upon learning about those</p>

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<p style="text-align: right;">133</p> <p>1 studies?</p> <p>2 <b>A. Probably an Internet search. Possibly from</b></p> <p>3 <b>testimony in prior sessions. I think in one of our -- I</b></p> <p>4 <b>think in the 2009 session, one of the witnesses was an</b></p> <p>5 <b>Indiana elections official who would have probably</b></p> <p>6 <b>suggested or shown the impact in that state.</b></p> <p>7 Q. Did you chiefly learn about the studies of the</p> <p>8 impact in Indiana and Georgia through those states'</p> <p>9 election officials?</p> <p>10 <b>A. I can't say chiefly. I'm sure to some extent</b></p> <p>11 <b>it was directly from them. To some extent it was</b></p> <p>12 <b>indirectly by reading reports from those agencies</b></p> <p>13 <b>online. But I'm sure there were lots of other</b></p> <p>14 <b>independent sources I looked at.</b></p> <p>15 Q. When you were involved in drafting and</p> <p>16 developing Senate Bill 14, did you consider other forms</p> <p>17 of ID to include that were not ultimately in the bill</p> <p>18 that became law?</p> <p>19 <b>A. Did I consider them?</b></p> <p>20 Q. Yes.</p> <p>21 <b>A. I think, sure. I mean, lots of forms of ID</b></p> <p>22 <b>exist. I think there was a process. Again, I don't</b></p> <p>23 <b>remember making any sort of formal decisions about what</b></p> <p>24 <b>was and was not going to be included. But yeah, there</b></p> <p>25 <b>were -- if only from other drafts of the bill in</b></p>	<p style="text-align: right;">135</p> <p>1 back on the record now, to the extent that the</p> <p>2 defendants did not object to those portions of the</p> <p>3 testimony that were designated as highly confidential or</p> <p>4 exhibits introduced as part of that testimony, we're</p> <p>5 going to assert a standing objection to those documents</p> <p>6 that were produced from Texas v. Holder pursuant to</p> <p>7 Judge Ramos's order that they were only legislatively</p> <p>8 privileged. So that's the same objection that we've</p> <p>9 asserted previously in this deposition, and it will be</p> <p>10 our standing objection to those documents that are</p> <p>11 introduced as highly confidential.</p> <p>12 MS. WESTFALL: Very well.</p> <p>13 Q. (By Ms. Westfall) Turning back to Exhibit 161,</p> <p>14 Senate Bill 14, dated 1-12-2011. We were just talking</p> <p>15 about forms of ID that you considered and did not</p> <p>16 include in the bill. Do you recall any particular forms</p> <p>17 of ID that you considered, you, collectively, you,</p> <p>18 Ms. McCoy, Ms. Fagan, you, yourself, within your office,</p> <p>19 that were not included in Senate Bill 14 ultimately?</p> <p>20 <b>A. I'm not aware of what forms of ID Ms. McCoy or</b></p> <p>21 <b>others considered. In terms of what I considered,</b></p> <p>22 <b>frankly, I don't recall. But again, I'm sure I would</b></p> <p>23 <b>have considered, you know, forms of ID that had been</b></p> <p>24 <b>used in other states, that existed in the previous</b></p> <p>25 <b>versions of this legislation.</b></p>
<p style="text-align: right;">134</p> <p>1 <b>previous -- similar bills in previous sessions, you</b></p> <p>2 <b>know, and opponents of the bill would certainly have</b></p> <p>3 <b>suggested alternative or additional methods of ID.</b></p> <p>4 Q. Could you --</p> <p>5 MS. HALPERN: Counsel, I'd like to confer</p> <p>6 with the witness. We're treading into deliberative</p> <p>7 process privilege territory now, and I want to just</p> <p>8 confer with him and see if he wants to waive it. Can we</p> <p>9 go off?</p> <p>10 MS. WESTFALL: Certainly.</p> <p>11 (Recess taken from 12:20 to 12:24 p.m.)</p> <p>12 MS. HALPERN: I'm hoping that the both of</p> <p>13 you counsel will confer, because the rule is seven</p> <p>14 hours. It's not seven hours for one and seven hours for</p> <p>15 somebody else. So if she uses up all your time, that's</p> <p>16 a dispute you have to have with Elizabeth and not -- not</p> <p>17 with this witness and not with his lawyer.</p> <p>18 MS. WESTFALL: We'll confer.</p> <p>19 MS. HALPERN: Okay.</p> <p>20 MS. WESTFALL: We're not saying we agree</p> <p>21 with you. We'll confer.</p> <p>22 MS. HALPERN: All right.</p> <p>23 MS. WESTFALL: In the interest of</p> <p>24 cooperation.</p> <p>25 MR. WHITLEY: And to be clear, since we're</p>	<p style="text-align: right;">136</p> <p>1 Q. Did you consider allowing the use of expired</p> <p>2 IDs in Senate Bill 14?</p> <p>3 <b>A. I don't recall a specific consideration of</b></p> <p>4 <b>that.</b></p> <p>5 <b>Q. Did you conduct during this period kind of in</b></p> <p>6 <b>the beginning of January or prior to that time, any</b></p> <p>7 <b>analyses about how many registered voters possessed the</b></p> <p>8 <b>required forms of ID under Senate Bill 14?</b></p> <p>9 <b>A. I remember meeting with the Secretary of</b></p> <p>10 <b>State's office, but I can't recall -- about available</b></p> <p>11 <b>identification, but I cannot remember the details of</b></p> <p>12 <b>that meeting.</b></p> <p>13 <b>Q. Was that meeting around February or late</b></p> <p>14 <b>January 2011?</b></p> <p>15 <b>A. I don't know.</b></p> <p>16 <b>Q. Was that with Ms. McGeehan?</b></p> <p>17 <b>A. Yes.</b></p> <p>18 <b>Q. Was Coby Shorter at that meeting?</b></p> <p>19 <b>A. I cannot recall, but I don't believe so.</b></p> <p>20 <b>Q. Was John Sepheri at that meeting?</b></p> <p>21 <b>A. I don't recall.</b></p> <p>22 <b>Q. Was Senator Williams' staff person at that</b></p> <p>23 <b>meeting?</b></p> <p>24 <b>A. I can't recall.</b></p> <p>25 <b>Q. What was the meeting about?</b></p>

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<p style="text-align: right;">137</p> <p>1 A. My memory is that Janice and myself, possibly 2 Jennifer Fagan and possibly others, met I believe in 3 Senator Fraser's offices to discuss generally the 4 availability of IDs. I don't recall specifics of the 5 meeting. I know it was generally about the election 6 process. There may have been some discussion of how 7 different steps in the legislative -- electoral process 8 work, but I can't remember specifics. 9 Q. Was this meeting before the Senate, the 10 Committee of the Whole or the full Senate considered 11 SB 14? 12 A. Probably, but I can't be sure. 13 Q. And was part of that discussion about which 14 registered voters have forms of state issued ID? 15 MS. HALPERN: I'm going to object as 16 vague. 17 A. Yeah, I think -- go ahead, I'm sorry. 18 MS. HALPERN: I don't understand your 19 question. 20 Q. (By Ms. Westfall) You may answer. 21 A. I think in speaking to Ms. McGeehan from the 22 Secretary of State's office, I would have been 23 interested in knowing how many voters used ID when they 24 vote as opposed to using just a registration card or 25 some other ID.</p>	<p style="text-align: right;">139</p> <p>1 Q. -- handguns? 2 A. Yes, it would, CHL license, CHL, yeah. 3 Q. Was there discussion in this meeting about -- 4 with Ms. McGeehan, as to which voters possessed those 5 state-issued forms of ID? 6 A. I don't think so. I think it was strictly at 7 that time how many voters present a driver's license or 8 some other identification. It wasn't meant to be the 9 types of voters or how many types of ID. I think it was 10 just who does more than present their registration card. 11 That's my memory. 12 Q. Is it your understanding from that meeting that 13 the Secretary of State's office collects that 14 information? 15 A. I think they might. They are the counties know 16 who presents just a card versus presents an ID. I think 17 that might be right. 18 Q. Is that your understanding that that was part 19 of the statewide voter registration database? 20 A. I don't know what database it might exist in. 21 Q. At this time in early January-February 2011, 22 was there any analysis to determine whether minority 23 voters would be disproportionately less likely to 24 possess the state-issued forms of ID that you just 25 mentioned?</p>
<p style="text-align: right;">138</p> <p>1 Q. Interesting. So what did you learn from that 2 question? 3 A. I can't remember. 4 Q. Did you -- 5 A. I think I remember, frankly, that she would 6 look into it to be sure, and I can't remember the 7 outcome of that. 8 Q. What other forms of acceptable state-issued ID 9 under Senate Bill 14? 10 A. Under Senate Bill 14, if I can look to make 11 sure I'm correct. It's photo IDs including -- 12 Q. And I'm just turning your attention to the 13 state IDs only. 14 A. The state IDs under Senate Bill 14, and again, 15 all I have is this copy of Senate Bill 14. I don't know 16 what version this is. But my memory is it would be a 17 driver's license, a personal identification card or 18 election identification card issued by DPS. 19 MS. HALPERN: And I'd like the record to 20 reflect that the witness is testifying from Exhibit 151, 21 which is dated January 12, 2011. 22 MS. WESTFALL: Thank you, Counsel. 23 Q. (By Ms. Westfall) Would it also include 24 license to carry -- 25 A. Right.</p>	<p style="text-align: right;">140</p> <p>1 A. I -- I did not conduct such research, but I 2 don't know if it existed. 3 Q. Are you aware of any analysis that you didn't 4 conduct along those lines? 5 A. I have to say I don't recall. I know there was 6 testimony in the committee process about the impact on 7 various populations, and I can't remember how much of 8 that was hypothesis and how much was based on other 9 states and how much was based on formal studies. 10 Q. What was the purpose of not allowing voters to 11 use nonphoto ID in Senate Bill 14? 12 A. I don't know the purpose, because it's not my 13 bill. I think there was public discussion about the 14 need to have a secure process, and nonphoto ID is less 15 secure than photo ID. 16 Q. What is the basis for that statement? 17 A. There -- if a document has a photo with a 18 person's face on it, especially the type of document 19 listed in Senate Bill 14, that's generally a much more 20 secure document with various seals and holograms and 21 codes on it that make it more difficult to forge, as 22 opposed to some of the older law-permissible IDs such as 23 utility bills or government checks or so forth. 24 Q. And is it -- was it your view that those bills, 25 those forms of ID and the nonphoto ID would not</p>

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<p style="text-align: right;">141</p> <p>1 sufficiently prove that the voter was who she said she</p> <p>2 was at the polls?</p> <p>3 <b>A. I think my opinion is that voters who appear</b></p> <p>4 <b>without photo ID, there's a greater chance that that is</b></p> <p>5 <b>not the voter they claim to be --</b></p> <p>6 Q. Was there any --</p> <p>7 <b>A. -- because it's a less secure form of</b></p> <p>8 <b>identification.</b></p> <p>9 Q. Was there any factual basis for drawing the</p> <p>10 conclusion that nonphoto ID was not effective?</p> <p>11 <b>A. Sure. I think, for one, practice of the</b></p> <p>12 <b>federal government for many benefits and access at the</b></p> <p>13 <b>federal level, but also in Texas, you have to have a</b></p> <p>14 <b>photo ID. So I guess a lot of us thought if it was good</b></p> <p>15 <b>enough for the feds, then it was good enough for Texas.</b></p> <p>16 Q. Under -- again, going back to the Help America</p> <p>17 Vote Act, is it your understanding under that federal</p> <p>18 law that if a voter registers and their information</p> <p>19 cannot be matched against the driver license database or</p> <p>20 Social Security, that they must show a form of ID when</p> <p>21 they appear in person to vote; is that right?</p> <p>22 <b>A. I'm not -- I'm not sure.</b></p> <p>23 Q. Okay. Are you aware of any facts indicating</p> <p>24 that a voter under Texas previous law came into the</p> <p>25 polling place with a nonphoto ID and tried to him</p>	<p style="text-align: right;">143</p> <p>1 Q. Eight and nine. Just take a look. You don't</p> <p>2 need to read them aloud, but if you could just take a</p> <p>3 look and let me know when you've had a chance.</p> <p>4 <b>A. Okay.</b></p> <p>5 Q. Do you see that this only includes photo ID?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. Do you know why non-photo ID was not included?</p> <p>8 <b>A. I don't know.</b></p> <p>9 Q. Do you know who made the decision not to</p> <p>10 include non-photo ID in Senate Bill 14?</p> <p>11 <b>A. I don't, but I can presume it's Senator</b></p> <p>12 <b>Fraser's bill. And he decided, but I don't know that.</b></p> <p>13 MS. HALPERN: I ask the witness not to</p> <p>14 speculate.</p> <p>15 Q. (By Ms. Westfall) Did anything occur between</p> <p>16 2009 and 2011 that made two forms of non-photo ID an</p> <p>17 acceptable option in 2009, but not in 2011?</p> <p>18 <b>A. Not that I'm aware.</b></p> <p>19 Q. Would allowing the use of non-photo ID</p> <p>20 interfere with the purposes of Senate Bill 14?</p> <p>21 <b>A. Would allowing non-photo ID interfere with the</b></p> <p>22 <b>purposes? The purposes, as I understand them, are to</b></p> <p>23 <b>increase the security of the elections, and so I</b></p> <p>24 <b>would -- in my opinion, I would say yes, non-photo is</b></p> <p>25 <b>less secure. To the extent that's a purpose of the</b></p>
<p style="text-align: right;">142</p> <p>1 impersonate another voter?</p> <p>2 <b>A. I believe there was testimony during some of</b></p> <p>3 <b>the committee processes. In fact, I think Senator</b></p> <p>4 <b>Williams' own brother was a victim of in-person voter</b></p> <p>5 <b>fraud. He had been shown casting a vote but had, in</b></p> <p>6 <b>fact, not yet voted in that election. There may have</b></p> <p>7 <b>been other examples that I can't specifically remember.</b></p> <p>8 Q. Other than the public record surrounding SB 14</p> <p>9 and SB 362, are you aware of any other instances of the</p> <p>10 use of nonphoto ID leading to that consequence that you</p> <p>11 just described?</p> <p>12 <b>A. Not -- no.</b></p> <p>13 MS. HALPERN: Counsel, lunch.</p> <p>14 MS. WESTFALL: Let's do lunch. Let's go</p> <p>15 off the record, because it will take a little while to</p> <p>16 finish talking about this preliminary stuff.</p> <p>17 (Lunch recess from 12:35 to 1:39 p.m.)</p> <p>18 Q. (By Ms. Westfall) So we were discussing before</p> <p>19 lunch the Exhibit 161, the version of Senate Bill 14</p> <p>20 dated January 12, 2011.</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. What was -- can you review the forms of ID</p> <p>23 under this version of the bill, which are at pages,</p> <p>24 gosh --</p> <p>25 <b>A. Eight and nine.</b></p>	<p style="text-align: right;">144</p> <p>1 <b>bill, then it interferes with that purpose.</b></p> <p>2 Q. In 2009, with regard to Senate Bill 362, at</p> <p>3 that time you argued in a previous exhibit we discussed</p> <p>4 that non-photo ID did further the purpose of preventing</p> <p>5 voter fraud, increasing voter confidence, et cetera; is</p> <p>6 that correct?</p> <p>7 MS. HALPERN: Objection, misstates facts</p> <p>8 not in evidence.</p> <p>9 <b>A. I'd have to double-check and see. I don't</b></p> <p>10 <b>think first that it was the purpose, and I'm not sure</b></p> <p>11 <b>that I argued that as you suggested. To the extent that</b></p> <p>12 <b>you're referring to Exhibit 155, Reasons to Support 362</b></p> <p>13 <b>As Filed, I don't think it mentions -- on Number 5 on</b></p> <p>14 <b>00087008, one reason to support the bill is that it</b></p> <p>15 <b>increases the chance of the federal preclearance because</b></p> <p>16 <b>many forms of ID are acceptable, is that --</b></p> <p>17 MS. WESTFALL: Can I break in right now?</p> <p>18 This needs to be designated as highly confidential, his</p> <p>19 response.</p> <p>20 Q. (By Ms. Westfall) Turning your attention back</p> <p>21 to Exhibit 155, did you not, with regard to the talking</p> <p>22 points at Texas TX00087009, argue and present talking</p> <p>23 points that at Roman II that the bill protects Texas</p> <p>24 voters in five different regards?</p> <p>25 <b>A. Yes, I did.</b></p>

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<p style="text-align: right;">145</p> <p>1 Q. And that was -- you were arguing that the bill, 2 Senate Bill 362, protects Texas voters, were you not? 3 A. Yes. But I was not arguing it was the only way 4 to protect Texas voters. That's what your earlier 5 question was asking. 6 Q. Are you aware of any facts at all that support 7 the decision not to include non-photo ID in Senate Bill 8 14? 9 A. I -- again, I'm not sure why Senator Fraser 10 crafted this bill the way he did. 11 Q. Are you aware that Senate Bill 362 permitted 12 the use of state and federal issued photo ID? 13 A. Yes. 14 Q. Do you know why Senate Bill 14 did not include 15 these forms of ID? 16 A. I don't. Except to say it's a different bill 17 and a different session, but I don't know why. 18 Q. Were you involved in any discussions about the 19 use of non-photo ID in -- about including that in Senate 20 Bill 14? 21 MS. HALPERN: Objection, asked and 22 answered. I think we covered this before lunch. 23 Q. (By Ms. Westfall) You may answer. 24 A. I don't recall specific discussions about what 25 -- whether those provisions should be in the bill or</p>	<p style="text-align: right;">147</p> <p>1 use employee IDs? 2 A. I don't see employer IDs listed in this copy of 3 362 that I have, except to the extent they would be an 4 ID card issued by the federal or state government or 5 local government. 6 Q. Thank you. 7 Did Senate Bill 362 allow for the use of 8 student IDs? 9 A. Not specifically. Again, to the extent that a 10 student ID card was considered an ID card issued by 11 federal or state government, it would be covered by 362. 12 So I suppose some ID cards from the universities. 13 Q. So were student IDs included under agencies or 14 institutions of the state to the extent they were state 15 universities? 16 A. I think the argument could be made that 17 institution of this state includes a state university. 18 Q. Do you know why Senate Bill 14 did not include 19 the use of student IDs? 20 A. I don't know. I do know during the open -- the 21 floor debate on this bill, there were some concern that 22 universities might be treated differently and that it 23 would be confusing to allow some university IDs but not 24 others. And the concern was that if it was not a state 25 university, there would be no way of controlling the</p>
<p style="text-align: right;">146</p> <p>1 not. 2 Q. Do you recall any discussions about whether to 3 include state and federal issued photo ID in Senate Bill 4 14? 5 A. I don't recall. 6 Q. Are you aware of any facts that would support 7 any decision not to include those as acceptable forms of 8 ID in Senate Bill 14? 9 A. No. I mean, again, except to say that SB 14, I 10 think, provides a more secure electoral system than 362. 11 I don't know that that was the reason. 12 Q. Other than what you testified to earlier today, 13 you're not aware of any other facts or rationales for 14 why those forms of ID were not included in Senate Bill 15 14? 16 A. I don't think so. 17 Q. Did Senate Bill 14 permit the use of employee 18 IDs? 19 A. Senate Bill 14? 20 Q. Yes. 21 A. I don't believe it did. 22 Q. Do you know why it did not allow the use of 23 employee IDs? 24 A. I do not know. 25 Q. Did Senate Bill 362 allow the use -- voters to</p>	<p style="text-align: right;">148</p> <p>1 form of those IDs, and that might be less secure. 2 Q. Do you know how the exception for individuals 3 with disabilities came to be included in Senate Bill 14? 4 A. My memory is that it was suggested on the floor 5 by Senator -- and I can't recall for sure, if that is 6 correct, and if so, which Senator suggested it. 7 Q. Was it Senator Patrick? 8 A. It may have been. 9 Q. Do you know why that was included as an 10 exception to the bill? 11 A. My memory is that he, on the floor at least, 12 said -- and I don't know personally, but my memory from 13 the floor debate is that he had done lots of work with 14 disabled populations and wanted that exception in there. 15 Q. Do you have any other information that was not 16 in public record as to why the disability exemption was 17 included in Senate Bill 14? 18 A. No. 19 Q. How did the exception for first -- strike that. 20 In one or more iterations of Senate Bill 21 14, was there an exemption for voters over the age of 22 70? 23 A. I don't remember if Senate Bill 14 had such an 24 exemption or not. Yet, other versions of the bill -- 25 oh, wait, never mind. On Exhibit 161 on Page 5, yes, I</p>



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<p style="text-align: right;">149</p> <p>1 see that there is an exception for people 70 years of 2 age or older as of January 1, 2012. 3 Q. Do you know how this provision became included 4 in this version of Senate Bill 14? 5 A. I don't know. 6 Q. What is the purpose of that provision? 7 A. I don't know the intended purpose, but my guess 8 is -- 9 MS. HALPERN: Let me stop you right there. 10 A. I don't know the purpose. 11 MS. WESTFALL: And for the record, I would 12 like to note that you can make an objection based on 13 speculation, but of course, the witness can answer it. 14 It's not a proper basis under the federal rules for 15 instructing the witness not to answer. 16 Q. (By Ms. Westfall) Are you aware of any facts 17 that supported the need for this exemption for voters 18 over the age of 70? 19 A. No. 20 Q. How did the exception for individuals with 21 religious objections to being photographed arise? 22 A. I can't recall. 23 Q. What is the purpose of that provision? 24 A. As I understand it, and again, I can't remember 25 who raised the issue, but there is apparently -- and I</p>	<p style="text-align: right;">151</p> <p>1 signed into law that were made in responses to some of 2 those concerns? 3 A. Again, without -- because I'm not the sponsor 4 of the bill, I don't know why each decision was made to 5 change the bill. And alternatively, some of the bill 6 was changed by amendments on the floor, and it's hard to 7 say what the specific -- there's no one purpose for 8 every member's vote. So I can say the bill did change, 9 I'm sure parts of the -- some of those changes were a 10 reaction to opponents who raised the issues you cited, 11 but I'm not sure I can name them off the top of my head. 12 Q. Did the Lieutenant Governor play a role in 13 developing strategy to ensure that SB 14 would be 14 enacted? 15 A. Strategy for it to be enacted? Does that 16 mean -- 17 MS. HALPERN: I'm going to direct the 18 witness this sounds predecisional to me, and I think 19 we're starting to encroach on the Lieutenant Governor's 20 privilege. So I'm going to direct you not to answer 21 that one. 22 MS. WESTFALL: What is the privilege that 23 you're asserting here? 24 MS. HALPERN: Predecisional. 25 MS. WESTFALL: Deliberative process or</p>
<p style="text-align: right;">150</p> <p>1 don't know if it's from another case or another state, 2 but there's some religious sect or group that does not 3 believe in being photographed or believe that being 4 photographed somehow steals their soul or does something 5 that crosses the tenets of their religion, and 6 therefore, to be safe, that exception should be put in 7 the bill. 8 Q. Can you think of any other purposes for that 9 exemption? 10 A. No. 11 Q. Did you believe that that exemption was legally 12 required as a first amendment issue? 13 A. I don't know that I thought it was legally 14 required. 15 Q. Did the Legislature in the course of debating, 16 amending, considering SB 14, make any changes to the 17 bills based on the concerns of the impact on racial and 18 ethnic minority voters? 19 A. I'm not sure I can recall specific parts of the 20 bill. I know specific amendments were suggested by 21 minority members of the Senate, but I'm not sure, 22 without walking through the bill line by line, what 23 might be characterized as you did. 24 Q. Sitting here today, can you recall any of the 25 changes that were in the final version of the bill</p>	<p style="text-align: right;">152</p> <p>1 legislative -- 2 MS. HALPERN: Yes, deliberative process. 3 MS. WESTFALL: Okay. And we have a 4 standing disagreement on whether that is an appropriate 5 privilege to assert with regard to that question. 6 Q. (By Ms. Westfall) Are you aware of any strategy 7 by the Legislature as a whole or individual legislators 8 to ensure that Senate Bill 14 would not have the same 9 fate that SB 362 did in the house? 10 A. I'm not aware of specific discussions designed 11 to ensure passage, except to say that every decision in 12 the Legislature is designed to ensure passage. By the 13 supporters, I should say. 14 Q. Are you aware of any particular steps that were 15 taken by supporters of SB 14 to ensure the bill would be 16 enacted? 17 A. By enacted, do you mean adopted by the 18 Legislature or implemented by Secretary of State? 19 Q. Adopted by the Legislature. 20 A. I don't -- I can't point to a specific step 21 within the legislative process, other than the ones 22 required by the constitution and the rules before a bill 23 can become law. 24 (Exhibit 162 marked for identification.) 25 Q. (By Ms. Westfall) You've been handed what's</p>

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<p style="text-align: right;">153</p> <p>1 been marked as 162. Do you recognize this document?</p> <p>2 A. It looks to be a copy -- the first page is a</p> <p>3 copy of the cover of the Senate rule book, and the</p> <p>4 second page is a copy of Rule 5.11 regarding special</p> <p>5 orders.</p> <p>6 Q. Is 5.11D the same provision that was put into</p> <p>7 place in the rules in 2009?</p> <p>8 A. Let me double-check. Yes. Appears so.</p> <p>9 Q. Was it adopted for the same reasons that the</p> <p>10 rule was adopted in 2009?</p> <p>11 A. I don't know.</p> <p>12 Q. Under 5.11D from the 2011 session, it would</p> <p>13 only require the support of a majority to ensure that</p> <p>14 voter ID legislation was set as a special order; isn't</p> <p>15 that correct?</p> <p>16 A. Correct.</p> <p>17 Q. And the rule itself in 2011, 5.11D was adopted</p> <p>18 as part of all the rules that were adopted by a simple</p> <p>19 majority of the Senate; is that right?</p> <p>20 A. Correct.</p> <p>21 MS. WESTFALL: Would you mark this?</p> <p>22 (Exhibit 163 marked for identification.)</p> <p>23 MS. WESTFALL: And we're going to</p> <p>24 designate this as highly confidential.</p> <p>25 Q. (By Ms. Westfall) You've been handed what's</p>	<p style="text-align: right;">155</p> <p>1 Huffman.</p> <p>2 Q. Who did Wroe Jackson work for at this time?</p> <p>3 A. I believe Wroe worked for Senator Huffman, but</p> <p>4 he's now with the Secretary of State's Office. And I</p> <p>5 forget at what point he went from one office to the</p> <p>6 other.</p> <p>7 Q. Why did you circulate this e-mail?</p> <p>8 A. I think in the e-mail itself it says there's</p> <p>9 several documents that may prove useful in preparing for</p> <p>10 next week's voter ID debate.</p> <p>11 Q. And that's the reason why you sent it --</p> <p>12 A. I think so.</p> <p>13 Q. -- is to prepare --</p> <p>14 A. I can't recall sending the e-mail, but if</p> <p>15 that's what I wrote at the time, I'm sure that's the</p> <p>16 better indication.</p> <p>17 Q. Did you send these talking points, the summary</p> <p>18 of the standard, and chart of the differences to any</p> <p>19 other staff people for any other Senators?</p> <p>20 A. I don't recall. If none turned up in the</p> <p>21 discovery phase, then I don't think I did, or I don't</p> <p>22 have those copies. As far as I know, these are the only</p> <p>23 people.</p> <p>24 Q. Did Mr. Brunson or Ms. Rathgeber view these</p> <p>25 attachments before you sent this e-mail?</p>
<p style="text-align: right;">154</p> <p>1 been marked as Exhibit 163. Do you recognize this</p> <p>2 document?</p> <p>3 A. It looks like an e-mail from myself to some</p> <p>4 Senate staff and some people in my office with attached</p> <p>5 documents related to compliance with the Supreme Court,</p> <p>6 talking points on the bill, and comparisons of various</p> <p>7 state election laws.</p> <p>8 Q. Did you draft the cover? And it's TX00262645</p> <p>9 through TX00262649. Did you draft all these documents,</p> <p>10 including the cover e-mail?</p> <p>11 A. I think so.</p> <p>12 Q. Did you send this e-mail on Friday, January</p> <p>13 21st, to Jason Baxter, Janice McCoy and Jonathan</p> <p>14 Stinson?</p> <p>15 A. It looks that way.</p> <p>16 Q. And you copied your chief of staff and</p> <p>17 Lieutenant Governor Blaine Brunson and Julia Rathgeber</p> <p>18 as the policy director?</p> <p>19 A. Correct.</p> <p>20 Q. Is Jason Baxter a staff person, or was he at</p> <p>21 the time, a staff person for Senator Williams?</p> <p>22 A. Yes.</p> <p>23 Q. And is Jonathan Stinson was Senator Huffman's</p> <p>24 legislative director at the time?</p> <p>25 A. I don't know his title, but he was with Senator</p>	<p style="text-align: right;">156</p> <p>1 A. I can't recall.</p> <p>2 Q. Did Mr. Dewhurst?</p> <p>3 A. I can't recall.</p> <p>4 Q. Do you see that in your e-mail you allude to</p> <p>5 information discussed Sunday night?</p> <p>6 A. Yes.</p> <p>7 Q. Do you recall that discussion that you had</p> <p>8 Sunday night?</p> <p>9 A. My memory is it was -- it may have been a</p> <p>10 briefing, but I can't remember who it was for. These</p> <p>11 staffers presumably, but I can't remember if it was a</p> <p>12 staff brief or Senators or who else might have been</p> <p>13 there.</p> <p>14 Q. Were you doing a briefing prior to Senate</p> <p>15 consideration of SB 14?</p> <p>16 A. Probably. Without knowing the timing, I'm not</p> <p>17 sure if it was designed to be directly ahead of floor</p> <p>18 debate, or if it was just a general briefing and this</p> <p>19 was the only time people could be available.</p> <p>20 Q. Do you know what information was discussed on</p> <p>21 Sunday night that you allude to in this e-mail?</p> <p>22 A. My memory is it was just a general overview</p> <p>23 similar to these documents, you know, big picture stuff,</p> <p>24 on the legality of voter ID and what other states were</p> <p>25 doing.</p>

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<p style="text-align: right;">157</p> <p>1 Q. Turning your attention to the second page, 2 TX00262646, do you see it's called Ensuring Compliance 3 With the Supreme Court? 4 A. Yes. 5 Q. And you list five legitimate state interests 6 under column -- under Roman I? 7 A. Yes. 8 Q. How did you know that Senate Bill -- strike 9 that. 10 What was the basis for your argument that 11 Senate Bill 14 would deter and detect fraud? 12 A. As I've said before, I think state efforts to 13 stop criminal acts from occurring deter those acts from 14 occurring. So in this case, if we know election fraud 15 exists and we take steps to stop it, that would deter. 16 Q. Okay. Other than that sort of logic that you 17 just set forth in this deposition, were there any facts 18 that would cause you to concluded that SB 14 would deter 19 and detect fraud? 20 MS. HALPERN: Objection, mischaracterizes 21 his answer. Objection, compound. Objection, 22 misleading. 23 Q. (By Ms. Westfall) You may answer. 24 A. Again, I think taking the whole of testimony 25 over the preceding sessions, there have been testimony</p>	<p style="text-align: right;">159</p> <p>1 ballot. There are various notice requirements, and the 2 forms of ID listed here tend to be more secure. To the 3 extent we're talking about modernization, I think most 4 of these have various seals and bar codes and things 5 that make them more secure and more useful as 6 identification documents than some of the items 7 previously admissible under law. 8 Q. And because of the security of those particular 9 forms of ID, it modernizes election procedures in your 10 view? 11 A. Sure. I think a recently issued state ID is a 12 more modern form of identification than a utility bill. 13 Q. How does that modernize election procedures? 14 A. They're more technological, you know, features 15 of those forms of ID. They're more secure. In some 16 cases, they may be more recently issued. If they can't 17 be expired or can only be recently expired, that's 18 different than -- as far as I know, the utility bill, 19 for example, requirement didn't have an expiration 20 component to it. 21 Q. So the next two bullets are kind of similar; 22 protecting against voter fraud enabled by inaccurate 23 voter registration rolls, and counting only the eligible 24 voters to vote, right? 25 A. Right.</p>
<p style="text-align: right;">158</p> <p>1 and research done by myself and others showing that 2 fraud exists in Texas. And this had been implemented in 3 other states and as far as we knew was successful, and 4 therefore, it seemed reasonable to implement in Texas. 5 Q. How did you know that voter ID was successful 6 in other states? 7 A. When I say successful, I mean it had been 8 upheld by the courts and had not resulted in decreased 9 turnout. As it relates to fraud, I probably should have 10 used a different word, because I'm not sure sitting here 11 that I can say successful, but... 12 Q. It was not -- those bills -- in other words, 13 those bills were not found to be unlawful, and according 14 to studies that you saw, it did not reduce turnout in 15 those states; is that correct? 16 A. That is correct. 17 Q. What facts are you aware of that SB 14 would 18 improve and modernize election procedures? 19 A. Let me look at the bill real quick. 20 Q. Take your time. 21 A. First, I would say improve would include make 22 more secure, so by making the elections more secure, 23 you're improving them. Further, it provides more detail 24 for voters to -- regarding how to make sure that their 25 vote counts should they be asked to cast a provisional</p>	<p style="text-align: right;">160</p> <p>1 Q. Kind of similar? 2 What facts do you know or did you know at 3 the time when you wrote this set of -- set of talking 4 points, that would enable you to predict that SB 14 5 would have that effect? 6 A. Again, I think the whole intent of the bill is 7 to make sure eligible, properly identified voters are 8 casting votes. We had had testimony over the years 9 that, in fact, the registration rules were not a hundred 10 percent accurate and, in fact, there may be registration 11 cards sent to people who are dead or felons or otherwise 12 ineligible. 13 And so accurate, up-to-date identification 14 required at the polling place seems on its face to 15 protect against fraud and be designed to count only 16 eligible voters and votes. 17 Q. Isn't it true that some of the forms of ID 18 allowable under SB 14 could be obtained by persons who 19 are not U.S. citizens? 20 A. Sure. No system is perfect, but I think this 21 was a step in the right direction towards increasing the 22 security. It didn't say make a hundred percent secure, 23 because there's no such thing. But yes, any system 24 designed by humans can be abused by humans. 25 Q. So what types of ineligible voters would SB 14</p>

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<p style="text-align: right;">161</p> <p>1 prevent from voting?</p> <p>2 A. It's a broad category, I think. My</p> <p>3 understanding of ineligible voters would be someone who</p> <p>4 doesn't live in the state, someone who is dead, someone</p> <p>5 who fraudulently obtains someone else's identifying</p> <p>6 registration card, someone who produces false</p> <p>7 documentation. I could go on, I guess, but it's a broad</p> <p>8 category.</p> <p>9 Q. Well, turning back to that first category,</p> <p>10 people that don't reside in the state, those people are</p> <p>11 clearly ineligible to vote in the State of Texas,</p> <p>12 correct?</p> <p>13 A. Right. Well, I should say if they're a</p> <p>14 resident, but currently out of the state, they may vote.</p> <p>15 But yes, generally, that's right.</p> <p>16 Q. Assuming someone moved to another state with</p> <p>17 intent to remain in that other state, and they were not</p> <p>18 a Texas resident, then suppose that individual came back</p> <p>19 into the state with a driver's license with their former</p> <p>20 Texas address and a picture, that would be a qualifying</p> <p>21 ID under SB 14, correct?</p> <p>22 A. Uh-huh.</p> <p>23 Q. So under that circumstance, it would not</p> <p>24 prevent an ineligible voter, who should not be on the</p> <p>25 voter rolls, from participating in an election; isn't</p>	<p style="text-align: right;">163</p> <p>1 cards, which are similar to driver's licenses, but for</p> <p>2 the purpose of having a photo ID for elections, and</p> <p>3 those were to be issued at no cost.</p> <p>4 Q. At the time that you wrote these bullet points,</p> <p>5 you knew, did you not, that it cost -- there was a cost</p> <p>6 associated with obtaining a birth certificate in the</p> <p>7 State of Texas, correct?</p> <p>8 A. At the time of this, yes.</p> <p>9 Q. And that cost was \$22 at a minimum. Correct?</p> <p>10 A. Yes. But it's not today, as I understand it.</p> <p>11 Q. But at the time the bill was being considered</p> <p>12 when you wrote these bullet points, the cost was \$22,</p> <p>13 right?</p> <p>14 A. Again, yes, and this bullet point says, access</p> <p>15 to free photo ID cards, the cards are free.</p> <p>16 Q. But the underlying documentation to get the</p> <p>17 free card is not free, correct?</p> <p>18 A. If you already have a birth certificate, it's</p> <p>19 free.</p> <p>20 Q. If you don't have a birth certificate, it's not</p> <p>21 free though, right?</p> <p>22 A. It would have been 22 dollars, and now I</p> <p>23 believe it's either zero, zero to 3 dollars.</p> <p>24 Q. That occurred -- the change in what it cost to</p> <p>25 get a birth certificate occurred after Senate Bill 14</p>
<p style="text-align: right;">162</p> <p>1 that right?</p> <p>2 A. Right. Like I said, there's no perfect system.</p> <p>3 The universe of potential crimes or ineligible votes</p> <p>4 that would be cast is larger without this bill, and it</p> <p>5 is smaller with this bill, but it's not a perfect</p> <p>6 system. Of course, fraud still exists, and that's why</p> <p>7 lots of other bills have been able to be introduced</p> <p>8 regarding voter fraud. There's lots of types of fraud</p> <p>9 and efforts to stop that.</p> <p>10 Q. And then finally, what facts were you aware of</p> <p>11 at the time that you wrote this, that SB 14 would</p> <p>12 protect public confidence in elections?</p> <p>13 A. As you asked a similar question about 362, I</p> <p>14 think the polling continued to show that the voters of</p> <p>15 Texas supported photo ID, and that includes minority</p> <p>16 voters, blacks and Hispanics, and then voters as a whole</p> <p>17 overwhelmingly. I think you could draw just from that,</p> <p>18 that public confidence would increase by adopting</p> <p>19 measures supported by the public.</p> <p>20 Q. Turning to measures required to offset burdens,</p> <p>21 how did SB 14 accomplish and fulfill these required</p> <p>22 measures? And we'll start off with the first one, how</p> <p>23 does SB 14 provide access to free photo ID cards?</p> <p>24 A. As I see it, the bill currently as implemented</p> <p>25 allows -- required DPS to create election identification</p>	<p style="text-align: right;">164</p> <p>1 was enacted, did it not?</p> <p>2 A. I think that's right.</p> <p>3 Q. As to the second bullet, availability of</p> <p>4 provisional ballots and absentee ballots, how did Senate</p> <p>5 Bill 14 make available provisional ballots beyond what</p> <p>6 was already required by the Help America Vote Act and</p> <p>7 existing Texas law?</p> <p>8 A. Well, I mean, the section of the bill, I can</p> <p>9 pull it out, as I said earlier, if a voter -- the intent</p> <p>10 was if a voter appears without the appropriate ID, they</p> <p>11 would not be turned away, they would be allowed to cast</p> <p>12 a provisional ballot. And then the bill sets out</p> <p>13 provisions for a voter to provide better identification</p> <p>14 to have the ballot counted. And whether that's an</p> <p>15 addition to provisions under HAVA or other statutes, I'm</p> <p>16 not sure. But it seems like this particular memo that</p> <p>17 you're pointing to, in the Supreme Court decision, they</p> <p>18 wanted to make sure provisional ballots were available.</p> <p>19 Whether that's available because of HAVA or because of</p> <p>20 state law, I don't think mattered to the court.</p> <p>21 Q. But provisional ballots aren't very meaningful</p> <p>22 if you cast them and then they're not counted, right?</p> <p>23 That's not really voting, right?</p> <p>24 A. It's voting, but I think again, the idea that a</p> <p>25 constituent can go back and confirm that their ballot is</p>

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<p style="text-align: right;">165</p> <p>1 being counted was the point. And then SB 14 voters are</p> <p>2 allowed the opportunity to get the ID and make sure</p> <p>3 their ballot is counted.</p> <p>4 Q. Do you think that having to go back to an</p> <p>5 election official a second time is more burdensome or</p> <p>6 less burdensome than voting a provisional ballot once</p> <p>7 and having election officials determine whether that's</p> <p>8 valid from the standpoint of the voters?</p> <p>9 A. It's all part of casting a vote. Two trips is</p> <p>10 more than one trip. But again, in terms of the process</p> <p>11 of voting, there's lots of steps. In Texas, for</p> <p>12 example, in primaries and caucuses and things, there are</p> <p>13 multiple meetings and steps you have to have your voice</p> <p>14 counted. So yes, if you're asking me is two trips more</p> <p>15 than one, yes, it is. Is it more burdensome? You know,</p> <p>16 it's part of casting a vote, but I don't think it's too</p> <p>17 burdensome.</p> <p>18 Q. In terms of the inconvenience of voting, are</p> <p>19 you aware that to obtain an EIC, you must present a</p> <p>20 document that indicates your U.S. citizenship?</p> <p>21 A. I'm not aware. I'm aware that -- my</p> <p>22 understanding is that the EIC runs parallel to driver's</p> <p>23 licenses. And obviously, the distinction being that one</p> <p>24 is for voting only and one is for a broader set of</p> <p>25 functions. So I can't say that I know that to be a</p>	<p style="text-align: right;">167</p> <p>1 proof of citizenship to obtain an EIC, that is not how</p> <p>2 you prove citizenship when you register to vote; is that</p> <p>3 right?</p> <p>4 A. I think that as correct.</p> <p>5 Q. Because when you register to vote, you sign an</p> <p>6 application under penalty of perjury saying, I am a U.S.</p> <p>7 citizen; is that correct?</p> <p>8 A. Correct.</p> <p>9 Q. And that's not the same as showing a</p> <p>10 documentary proof of citizenship?</p> <p>11 A. Correct.</p> <p>12 Q. Is it true in the State of Texas that many</p> <p>13 voters can walk to their precinct to vote?</p> <p>14 A. That seems accurate to me.</p> <p>15 Q. But it's not the case with regard to all driver</p> <p>16 license offices, is that, that you can walk to your</p> <p>17 driver license office?</p> <p>18 A. I don't know that.</p> <p>19 MS. HALPERN: Counsel, before you ask your</p> <p>20 next question, I would like to confer with the witness.</p> <p>21 MS. WESTFALL: Certainly. Do you want to</p> <p>22 step out?</p> <p>23 MS. HALPERN: Yeah.</p> <p>24 (Brief recess from 2:19 to 2:22 p.m.)</p> <p>25 MS. HALPERN: Back on the record. I need</p>
<p style="text-align: right;">166</p> <p>1 fact.</p> <p>2 Q. Are you aware that Senate Bill 14 permitted DPS</p> <p>3 in creating the EIC to require fingerprinting of</p> <p>4 applicants?</p> <p>5 A. I'm not aware of that. And I don't have the</p> <p>6 EIC language in front of me, so I can't be a hundred</p> <p>7 percent certain what the statute says.</p> <p>8 Q. And voters in registering to vote need not</p> <p>9 supply fingerprints; is that correct?</p> <p>10 A. To register to vote, right, I don't think you</p> <p>11 need to supply fingerprints.</p> <p>12 Q. To register to vote, you need not, in the State</p> <p>13 of Texas, provide proof that you're a U.S. citizen,</p> <p>14 other than signing under penalty of perjury on your</p> <p>15 voter registration application; is that correct?</p> <p>16 A. Right. I think signing that -- effectively</p> <p>17 signing an affidavit is a step of assurance for the</p> <p>18 State of Texas.</p> <p>19 Q. And that's a different way to prove citizenship</p> <p>20 in the voter registration context than to obtain an EIC</p> <p>21 assuming you have to show --</p> <p>22 A. Fingerprints and signatures are different, yes.</p> <p>23 Q. Right. Now, strike that, because I think we</p> <p>24 just got -- talked over each other.</p> <p>25 Assuming that you must show documentary</p>	<p style="text-align: right;">168</p> <p>1 to make a late objection, Counsel, to your question</p> <p>2 asking the witness if he was aware that SB 14 allowed</p> <p>3 requiring fingerprints of a witness to get an EIC card.</p> <p>4 I don't know if you meant to phrase it that way.</p> <p>5 MS. WESTFALL: I know what I intended.</p> <p>6 MS. HALPERN: All right. I'm objecting to</p> <p>7 that assuming facts not in evidence.</p> <p>8 MS. WESTFALL: Okay. I guess we're</p> <p>9 back -- we're still back on, so.</p> <p>10 And we are continuing our designation as</p> <p>11 highly confidential. So I hope I did that for that</p> <p>12 prior document, I believe I did.</p> <p>13 Could you mark this?</p> <p>14 (Exhibit 164 marked for identification).</p> <p>15 Q. (By Ms. Westfall) You've been handed what's</p> <p>16 been marked as Exhibit 164. Do you recognize this</p> <p>17 document?</p> <p>18 A. Yes.</p> <p>19 Q. What is it?</p> <p>20 A. It is an e-mail from myself to various Senate</p> <p>21 staff, cc'ing my chief of staff and policy director,</p> <p>22 expressing concerns about preclearance. And then</p> <p>23 there's an attachment explaining generally the standard</p> <p>24 of review by the Department of Justice.</p> <p>25 Q. Do you see that at the top -- and this is --</p>



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<p style="text-align: right;">169</p> <p>1 for the record, this is TX00262650 through TX00262652.</p> <p>2 MS. HALPERN: Counsel, this is marked</p> <p>3 highly confidential.</p> <p>4 MS. WESTFALL: Yeah, we're still -- I</p> <p>5 believe we're still -- we should be still on the highly</p> <p>6 confidential designation. Thank you.</p> <p>7 Q. (By Ms. Westfall) Do you see at top of Page</p> <p>8 262650, that Mr. Stinson had forwarded this e-mail to</p> <p>9 Wroe Jackson and another recipient?</p> <p>10 A. Yes.</p> <p>11 Q. Do you know who that recipient is,</p> <p>12 jlawyer119@aol.com?</p> <p>13 A. No. It's -- no.</p> <p>14 Q. Why did you believe that preclearance was</p> <p>15 doubtful, to use your words?</p> <p>16 A. I think my reasoning was that the Obama DOJ had</p> <p>17 been aggressively interpreting and enforcing the Voter</p> <p>18 Rights Act through preclearance and didn't seem to</p> <p>19 particularly like Texas, and so there were -- there was</p> <p>20 a risk that it would not be precleared.</p> <p>21 Q. And you sent this e-mail Saturday, January 22,</p> <p>22 2011; is that right?</p> <p>23 A. That's what it looks like.</p> <p>24 Q. That was prior to the floor consideration or</p> <p>25 committee of the whole consideration of SB 14?</p>	<p style="text-align: right;">171</p> <p>1 A. Yes.</p> <p>2 Q. It wanted to enforce Senate Bill 14, did it</p> <p>3 not?</p> <p>4 A. Yes.</p> <p>5 Q. Why did you make -- do you see -- strike that.</p> <p>6 Do you see that in this e-mail you made</p> <p>7 the suggestion that the Legislature might consider</p> <p>8 adding a longer list of acceptable photo IDs?</p> <p>9 A. Yes. It says to increase the chances, you</p> <p>10 might consider adding a list of additional IDs.</p> <p>11 Q. And you proposed using language in Georgia's</p> <p>12 law, which includes ID issued by the federal government,</p> <p>13 state government or local government within the state?</p> <p>14 A. That's correct.</p> <p>15 Q. And you also suggested at a minimum, you might</p> <p>16 include language from Senate Bill 362 concerning valid</p> <p>17 ID issued by an agency or institution of the federal</p> <p>18 government or agency or institution of political</p> <p>19 subdivision of the state. Do you see that suggestion?</p> <p>20 A. Yes.</p> <p>21 Q. Why did you suggest adding these forms of ID to</p> <p>22 the bill?</p> <p>23 A. Again, I think we know that Georgia law was</p> <p>24 precleared, and so closer to other precleared laws, the</p> <p>25 better in terms of again increasing chances. It doesn't</p>
<p style="text-align: right;">170</p> <p>1 A. I don't have the history of the bill passage,</p> <p>2 so I think --</p> <p>3 Q. The best of your recollection.</p> <p>4 A. I can't remember the date the bill passed the</p> <p>5 Senate.</p> <p>6 MS. WESTFALL: Could we go off the record</p> <p>7 for one second?</p> <p>8 (Brief discussion off the record.)</p> <p>9 Q. (By Ms. Westfall) Did you ever share your view</p> <p>10 that preclearance was doubtful with Mr. Dewhurst?</p> <p>11 A. I can't recall.</p> <p>12 Q. Did you share with anyone else in your office</p> <p>13 besides Mr. Brunson and Ms. Rathgeber?</p> <p>14 A. Probably not.</p> <p>15 Q. Did you share with other staff people besides</p> <p>16 Mr. Baxter, Ms. McCoy and Mr. Stinson?</p> <p>17 A. I don't recall.</p> <p>18 Q. After you sent this e-mail, were there any</p> <p>19 changes made to the bill to address any of these</p> <p>20 concerns?</p> <p>21 A. Again, I don't know for sure without seeing</p> <p>22 subsequent copies of the bill. I know the bill changed</p> <p>23 from January 22nd through final passage.</p> <p>24 Q. The Texas Legislature wanted Senate Bill 14 to</p> <p>25 be precleared, did it not?</p>	<p style="text-align: right;">172</p> <p>1 mean it was the only way to do it, but I think it's easy</p> <p>2 to argue it would increase the chances of that</p> <p>3 happening.</p> <p>4 Q. Was there any other reason besides following</p> <p>5 Georgia's footsteps that you thought this would assist</p> <p>6 in increasing the likelihood of preclearance?</p> <p>7 A. Not that I recall?</p> <p>8 Q. Were these forms of ID added to SB 14?</p> <p>9 A. No. This language is not in SB 14. There are</p> <p>10 other -- there is other language from the Georgia law</p> <p>11 and the Texas law, but not this underlying language in</p> <p>12 Exhibit 164.</p> <p>13 Q. Are these IDs that you mention in your e-mail</p> <p>14 less secure than the other IDs that ultimately made it</p> <p>15 into SB 14?</p> <p>16 A. In my opinion -- is the underlying text less</p> <p>17 secure than the final version of SB 14, is that the</p> <p>18 question?</p> <p>19 Q. The question is: Are the IDs that you propose</p> <p>20 adding to SB 14 less secure than the IDs that were</p> <p>21 ultimately included in Senate Bill 14?</p> <p>22 A. I think the short answer is yes. I think to</p> <p>23 the extent you allow increasing number of</p> <p>24 identifications, it increases the chance of confusion on</p> <p>25 the part of the election poll workers and on the part of</p>

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<p style="text-align: right;">177</p> <p>1 MS. HALPERN: Objection, compound.</p> <p>2 Q. (By Ms. Westfall) You may answer.</p> <p>3 A. So the -- so I understand, so the -- again, the</p> <p>4 underlying -- additional forms of ID described by</p> <p>5 Exhibit 164, how does allowing those improve security?</p> <p>6 Q. How does it interfere with the ability of</p> <p>7 election officials to check your ID, see who you are,</p> <p>8 see that you're on the rolls and allow you to vote a</p> <p>9 regular ballot?</p> <p>10 A. Again, so the question is how does it make it</p> <p>11 less secure, and I think the answer is, as I said,</p> <p>12 potentially the more forms of ID, especially from any</p> <p>13 political subdivision in the state is more easily forged</p> <p>14 or less familiar to the poll worker. So therefore, less</p> <p>15 reliable as a form of ID.</p> <p>16 Q. Turning back now to Exhibit 164, when did you</p> <p>17 draft the Standard of Review by the Department of</p> <p>18 Justice at TK00262651?</p> <p>19 A. I don't recall.</p> <p>20 Q. Did you draft that before the session started</p> <p>21 in 2010?</p> <p>22 A. I don't recall.</p> <p>23 Q. Why did you draft that document?</p> <p>24 A. To brief people who are unfamiliar on the</p> <p>25 Standard of Review by the Department of Justice.</p>	<p style="text-align: right;">179</p> <p>1 or African-American voters possess the forms of ID in SB</p> <p>2 14?</p> <p>3 A. Not that I'm personally aware of.</p> <p>4 Q. Did you or anyone talk to legislators</p> <p>5 representing who were the candidates of choice of</p> <p>6 minority voters about their position on SB 14?</p> <p>7 A. Did I speak to them?</p> <p>8 Q. Did you or anyone you know speak to anyone</p> <p>9 about their position on SB 14?</p> <p>10 MS. HALPERN: Objection, vague.</p> <p>11 A. I don't know who other people spoke to, but at</p> <p>12 least in the public debate, there was several hours of</p> <p>13 back and forth between members of all races and parties.</p> <p>14 Q. (By Ms. Westfall) Other than the public debate,</p> <p>15 are you aware of any other conversations with members of</p> <p>16 the Legislature representing voters who were minority</p> <p>17 voters.</p> <p>18 A. I was not in those conversations.</p> <p>19 Q. Do you see that you discuss less retrogressive</p> <p>20 alternatives in your standard of review?</p> <p>21 A. Yes.</p> <p>22 Q. Were any additional forms of ID considered to</p> <p>23 address this point?</p> <p>24 A. There were lots of forms of identification</p> <p>25 considered. Again, publicly, I don't know what all was</p>
<p style="text-align: right;">178</p> <p>1 Q. Were you directed to draft that document?</p> <p>2 A. I don't believe I was, but I can't recall for</p> <p>3 sure.</p> <p>4 Q. Did you just do this of your own volition?</p> <p>5 A. Possibly, yes.</p> <p>6 Q. Did Mr. Dewhurst ask you to draft this?</p> <p>7 A. I don't recall that he did.</p> <p>8 Q. Under standard review under retrogressive</p> <p>9 effect, did the Legislature, subsequent to your drafting</p> <p>10 of this document, seek information to determine whether</p> <p>11 Hispanic and African-American voters are less likely to</p> <p>12 possess a photo ID?</p> <p>13 A. I'm not sure. I can't recall from the public</p> <p>14 testimony if that was mentioned or not. I know it was</p> <p>15 discussed at length amongst Senators in debate -- on the</p> <p>16 house floor during the debate.</p> <p>17 Q. Is there anything not in the public discussion</p> <p>18 about analysis of this question?</p> <p>19 A. Not that I'm aware of. I mean, what is not in</p> <p>20 the public discussion is evidence of a particular people</p> <p>21 who would have been unable to. I don't remember seeing</p> <p>22 or hearing of any particular individuals who were unable</p> <p>23 to obtain any ID.</p> <p>24 Q. But were there any private conversations among</p> <p>25 legislators to seek information about whether Hispanic</p>	<p style="text-align: right;">180</p> <p>1 considered in private or by sponsors outside of my</p> <p>2 knowledge.</p> <p>3 Q. Can you identify any attempts to make the bill</p> <p>4 less retrogressive or as least burdensome as possible to</p> <p>5 voters and still accomplish the goals of the</p> <p>6 Legislature?</p> <p>7 A. Sure. There were additional forms of ID added</p> <p>8 by amendment on the floor. There were broad exemptions</p> <p>9 for certain class of people. There were free election</p> <p>10 identification cards issued. I think all of those</p> <p>11 things were designed to be less burdensome for voters.</p> <p>12 Q. What were the forms of ID that were added?</p> <p>13 A. I don't have a final copy of the bill. I know</p> <p>14 concealed handgun license was one form. There may have</p> <p>15 been others that I'm forgetting without the bill.</p> <p>16 Q. Are the seven forms of ID under SB 14 as</p> <p>17 enacted, Texas driver license, Texas personal ID, EIC,</p> <p>18 concealed handgun license, military ID, citizenship --</p> <p>19 U.S. citizenship or passport, U.S. passport?</p> <p>20 A. Without -- those sound right, but without</p> <p>21 having the final bill in front of me, I can't say a</p> <p>22 hundred percent yes.</p> <p>23 MS. HALPERN: Counsel, I would like to</p> <p>24 take a break.</p> <p>25 MS. WESTFALL: Okay. Let's take a break.</p>

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<p style="text-align: right;">181</p> <p>1 (Recess from 2:41 to 2:51 p.m.)</p> <p>2 Q. (By Ms. Westfall) We're back on the record,</p> <p>3 and we were talking about Exhibit 164.</p> <p>4 A. Correct.</p> <p>5 Q. And in particular, the standard of review that</p> <p>6 you had drafted at TX00262651.</p> <p>7 A. Okay.</p> <p>8 Q. Do you see that you flagged the issue of</p> <p>9 whether the law includes mitigating effects?</p> <p>10 A. Yes.</p> <p>11 Q. And one of the things you list is education</p> <p>12 efforts targeted at minority communities?</p> <p>13 A. Yes.</p> <p>14 Q. Do you recall whether SB 14 included any</p> <p>15 targeted education efforts at minority communities as</p> <p>16 signed into law?</p> <p>17 A. Without having the final version in front of</p> <p>18 me, my memory is that Secretary of State was given</p> <p>19 authority to implement an education program. And the</p> <p>20 need to do that and minority training I think was</p> <p>21 discussed during debate over the bill.</p> <p>22 Q. But the discretion was given to the Secretary;</p> <p>23 is that correct?</p> <p>24 A. I think that is correct.</p> <p>25 Q. It wasn't provided in the bill itself --</p>	<p style="text-align: right;">183</p> <p>1 A. Well, it requires the voter registrar of every</p> <p>2 county that maintains a website to include information,</p> <p>3 so that would presumably include minority majority</p> <p>4 counties.</p> <p>5 Q. But to your knowledge, it's not a targeted</p> <p>6 voter education program; is that correct?</p> <p>7 A. Statute -- statutory language does not have</p> <p>8 specific reference to minorities.</p> <p>9 Q. In SB 14, does it include a provision about</p> <p>10 providing photo IDs in isolated and impoverished areas?</p> <p>11 A. I don't see specific references, again, other</p> <p>12 than the fact that those individuals would fall under</p> <p>13 general directions to county officials and the Secretary</p> <p>14 of State.</p> <p>15 Q. But to your knowledge, SB 14 did not have</p> <p>16 targeted -- a targeted program for isolated and</p> <p>17 impoverished areas; is that right?</p> <p>18 A. The statutory language did not, and I'm not</p> <p>19 certain if the Secretary of State or DPS or other state</p> <p>20 agencies have separate authority.</p> <p>21 Q. Does SB 14 -- any -- include any other programs</p> <p>22 designed to minimize the impact on minority voters --</p> <p>23 targeted on minority voters?</p> <p>24 A. I think the SB 14 has measures designed to</p> <p>25 broaden access to identifications and to exempt certain</p>
<p style="text-align: right;">182</p> <p>1 A. I think --</p> <p>2 Q. -- is that correct?</p> <p>3 A. I think that is correct, although I believe</p> <p>4 there was also reference requiring the Secretary of</p> <p>5 State to coordinate with nonprofits and other groups in</p> <p>6 developing the education efforts.</p> <p>7 Q. Do you see also that you listed programs</p> <p>8 designed to provide photo ID --</p> <p>9 (Noise interruption as someone enters</p> <p>10 room.)</p> <p>11 THE REPORTER: I'm sorry.</p> <p>12 MS. WESTFALL: Let's go off the record for</p> <p>13 one second.</p> <p>14 (Brief discussion off the record.)</p> <p>15 MS. WESTFALL: Could you mark this?</p> <p>16 (Exhibit 165 marked for identification.)</p> <p>17 Q. (By Ms. Westfall) You've been handed what's</p> <p>18 been marked as 165. Do you recognize this?</p> <p>19 A. 165 is a copy of SB 14.</p> <p>20 Q. This is the version that was signed into law;</p> <p>21 is that correct?</p> <p>22 A. Appears so.</p> <p>23 Q. So turning your attention now to Exhibit 165,</p> <p>24 are there education efforts targeted at minority</p> <p>25 communities in this bill?</p>	<p style="text-align: right;">184</p> <p>1 classes of individuals which might include minority</p> <p>2 voters.</p> <p>3 Q. Who were those exempted classes of voters?</p> <p>4 A. Well, in the case of the election</p> <p>5 identification cards, it would be voters who cannot</p> <p>6 afford and do not have other forms of photo ID. So to</p> <p>7 the extent minority voters fall under that group of</p> <p>8 people, they would be included.</p> <p>9 Q. Any other way?</p> <p>10 A. I thought there was exemptions, but I'm having</p> <p>11 trouble finding them.</p> <p>12 THE REPORTER: I'm sorry?</p> <p>13 A. I thought there were other exemptions, but I'm</p> <p>14 having trouble finding them.</p> <p>15 Q. (By Ms. Westfall) Is there an exemption for</p> <p>16 certain persons with disabilities who obtained</p> <p>17 documentation from the Social Security Administration --</p> <p>18 A. Yeah.</p> <p>19 Q. -- or the Veterans' Affairs Department?</p> <p>20 A. Yes, I believe there is.</p> <p>21 Q. And how does that relate to your contention</p> <p>22 that those are targeted to minority voters?</p> <p>23 A. It doesn't. My contention is that minority</p> <p>24 voters might be a class within these voters, the classes</p> <p>25 you described, for -- for disabled voters. For free</p>

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<p style="text-align: right;">185</p> <p>1 election identification cards, to the extent the</p> <p>2 position is that minorities are more likely to be poor,</p> <p>3 then I think providing free ID cards would be directly</p> <p>4 targeted to them.</p> <p>5 Q. Do you see that you also list as mitigating</p> <p>6 effects, photo IDs free of charge and widely available</p> <p>7 on the standard of review?</p> <p>8 A. Yes.</p> <p>9 Q. At the time SB 14 was under consideration by</p> <p>10 the Senate, did you consider that EICs would be as</p> <p>11 implemented by DPS widely available?</p> <p>12 A. Yes.</p> <p>13 Q. What was the basis of that conclusion?</p> <p>14 A. Basis of concluding that EICs would be --</p> <p>15 Q. Would be widely available.</p> <p>16 A. -- widely available? Because they are to be</p> <p>17 administered by a state agency with jurisdiction across</p> <p>18 the state.</p> <p>19 Q. Isn't it true that at the time SB 14 was under</p> <p>20 consideration by the Senate and subsequent even into</p> <p>21 2012, that 80 counties did not have a driver license</p> <p>22 office?</p> <p>23 A. I don't know the number of counties exactly</p> <p>24 without those offices, but I do know that there are</p> <p>25 mobile efforts and extended hours and other provisions</p>	<p style="text-align: right;">187</p> <p>1 Indiana?</p> <p>2 A. Was there consideration given to that? I think</p> <p>3 there probably was. I don't remember specific debate</p> <p>4 from the floor, but I would assume it was.</p> <p>5 And something occurs to me regarding your</p> <p>6 last question about IDs being widely available. If you</p> <p>7 point to the 80 counties' geography that you said at the</p> <p>8 time did not have offices, it's still not clear to me</p> <p>9 what percentage of Texans lived in those counties. My</p> <p>10 understanding is that the vast majority of Texas'</p> <p>11 population lives in counties that do have those offices.</p> <p>12 Q. When did you learn that fact?</p> <p>13 A. When did I learn that?</p> <p>14 Q. Assuming that that's right, when did you learn</p> <p>15 that fact?</p> <p>16 A. I believe that was discussed on the floor</p> <p>17 during debate.</p> <p>18 Q. Were there any changes to the bill considered</p> <p>19 as a result of your memo on the standard of review or</p> <p>20 your cover e-mail at Exhibit 164?</p> <p>21 A. I -- to the extent there were changes to the</p> <p>22 bill between this e-mail and the final version, I can't</p> <p>23 say to what extent those changes were a result of this</p> <p>24 memo. I don't pretend that I have that much influence,</p> <p>25 but there were changes to the bill.</p>
<p style="text-align: right;">186</p> <p>1 that DPS has undertaken to implement the law.</p> <p>2 Q. Just to go back to the question that I posed to</p> <p>3 you: At the time that SB was under consideration by the</p> <p>4 Senate --</p> <p>5 A. Uh-huh.</p> <p>6 Q. -- about 80 counties did not have driver</p> <p>7 license offices at that time; isn't that correct?</p> <p>8 A. I don't remember the number. I know there was</p> <p>9 discussion of it during floor debate about the number</p> <p>10 and whether it was accessible enough, but I don't</p> <p>11 remember that number.</p> <p>12 Q. Plans to put into place mobile EIC units did</p> <p>13 not get underway until long after SB 14 was signed into</p> <p>14 law; isn't that correct?</p> <p>15 A. I don't know the date that those started.</p> <p>16 Q. It was after the date that SB 14 was signed</p> <p>17 into law; isn't that correct?</p> <p>18 A. I don't know.</p> <p>19 Q. Do you see that it also lists, "How does this</p> <p>20 compare to the law of other states, is it less</p> <p>21 restrictive or more?"</p> <p>22 A. Yes.</p> <p>23 Q. Was consideration given to whether the Texas</p> <p>24 voter ID law was less restrictive, equally restrictive</p> <p>25 or more restrictive than the laws in Georgia and</p>	<p style="text-align: right;">188</p> <p>1 Q. Were any of these IDs that you suggested on the</p> <p>2 cover e-mail of 164 added?</p> <p>3 A. No, we don't have -- and again, I think the --</p> <p>4 the IDs described there, the underlined language on</p> <p>5 Exhibit 164, meaning, all federal, state, local,</p> <p>6 political subdivision IDs, it's considerably less secure</p> <p>7 because of the reasons we mentioned. They don't have</p> <p>8 expiration dates. They don't have bar codes. They</p> <p>9 could be, you know, produced by any -- an innumerable</p> <p>10 almost number of entities in Texas, given the large</p> <p>11 number of counties and local subdivisions within those</p> <p>12 counties.</p> <p>13 MS. WESTFALL: I'm going to object to your</p> <p>14 response as nonresponsive and ask you again.</p> <p>15 Q. (By Ms. Westfall) Were any of the IDs that you</p> <p>16 proposed in the e-mail in Exhibit 164 adopted in the</p> <p>17 final version of Senate Bill 14?</p> <p>18 A. The final version of Senate Bill 14 does not</p> <p>19 include this language.</p> <p>20 MS. WESTFALL: Could you mark this?</p> <p>21 (Exhibit 166 marked for identification.)</p> <p>22 Q. (By Ms. Westfall) You've been handed what's</p> <p>23 been marked as Exhibit 166. Do you recognize this</p> <p>24 document?</p> <p>25 A. It looks like an e-mail, two e-mails. One from</p>

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<p style="text-align: right;">189</p> <p>1 me to some Senate staffers. And then, again, an</p> <p>2 additional e-mail from Senator Huffman's staff or to</p> <p>3 another Huffman's staffer, or I think Huffman staffer,</p> <p>4 with an attachment on possible questions and amendments</p> <p>5 likely to arise tomorrow, which would be and the day</p> <p>6 after January 24.</p> <p>7 Q. Okay.</p> <p>8 A. And again, the attachment is Janice's notes on</p> <p>9 those questions.</p> <p>10 Q. And for the record, Exhibit 166 is TX00265539</p> <p>11 through TX00265543.</p> <p>12 Who is Amanda Montagne?</p> <p>13 A. Amanda Montagne at the time worked for Senator</p> <p>14 Williams.</p> <p>15 Q. Who is Ryan LaRue?</p> <p>16 A. I believe he also worked for Senator Williams</p> <p>17 at the time.</p> <p>18 Q. Why were you sending them this e-mail?</p> <p>19 A. My memory is that Senator Williams cared about</p> <p>20 this issue and intended to help defend the bill on the</p> <p>21 floor.</p> <p>22 Q. By this issue, you mean?</p> <p>23 A. Voter ID bill.</p> <p>24 Q. Did you have advanced notice of the amendments</p> <p>25 that were going to be offered?</p>	<p style="text-align: right;">191</p> <p>1 Q. Is that your strikeout?</p> <p>2 A. I don't -- I can't say for sure.</p> <p>3 Q. Do you see on page 265540, it discuss a lower</p> <p>4 elderly threshold?</p> <p>5 A. Yes.</p> <p>6 Q. Do you recall which senators requested these</p> <p>7 exemptions for voters over the age of 70?</p> <p>8 A. I don't.</p> <p>9 Q. Do you recall what other compromises, besides</p> <p>10 these amendments listed here, bill opponents asked of</p> <p>11 bill supporters?</p> <p>12 A. Without seeing a list of the amendments and</p> <p>13 without knowing the conversations between the senators,</p> <p>14 I don't know for sure what they -- what opponents</p> <p>15 wanted.</p> <p>16 Q. Did bill opponents ask that Senate Bill 14</p> <p>17 include additional forms of ID?</p> <p>18 A. Again, without having the amendments in front</p> <p>19 of me, I just can't recall specifically. I know -- I do</p> <p>20 remember -- again, CHLs were added at the requests of</p> <p>21 Senator Hinojosa.</p> <p>22 Q. CHLs are?</p> <p>23 A. Concealed handgun license. So at least for one</p> <p>24 case, opponents to the bill suggested an alternative</p> <p>25 form of ID, and that was acceptable.</p>
<p style="text-align: right;">190</p> <p>1 A. I don't think -- sometimes in the legislature</p> <p>2 they prefile amendment. The House does that a lot more</p> <p>3 often than the Senate. I can't remember if I saw</p> <p>4 amendments ahead of the floor debates. This</p> <p>5 amendment -- I mean, this attachment says the amendments</p> <p>6 that are likely to arise. I don't know how she came to</p> <p>7 that conclusion, but I don't recall seeing any</p> <p>8 amendments ahead of time.</p> <p>9 Q. Did you speak with authors of the amendments?</p> <p>10 A. It's possible. I mean, I speak to a lot of</p> <p>11 Senate staff every day from all parties on all sides of</p> <p>12 all issues so it's possible.</p> <p>13 Q. The e-mail indicates that your suggested</p> <p>14 revisions are in red; is that right?</p> <p>15 A. Yes.</p> <p>16 Q. And this is a black-and-white document; is that</p> <p>17 right?</p> <p>18 A. Uh-huh.</p> <p>19 Q. Do you recall what changes you made to</p> <p>20 Ms. McCoy's proposed responses to amendments in her</p> <p>21 Q&amp;A's?</p> <p>22 A. I don't remember.</p> <p>23 Q. Do you see there's a strikeout on the last page</p> <p>24 at 265543?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">192</p> <p>1 Q. Do you see at page TX00265541 through 43, it</p> <p>2 appears to be questions and answers?</p> <p>3 A. Yes.</p> <p>4 Q. Were these questions that Senator Fraser</p> <p>5 expected to receive on the floor from bill opponents?</p> <p>6 A. I don't know. I didn't write the documents, so</p> <p>7 I don't know for sure.</p> <p>8 Q. Do you see at 265542, it references statistics</p> <p>9 and voter turnout studies that were in the possession of</p> <p>10 Senator Wentworth in the middle of the page?</p> <p>11 A. Yes. I think Senator Wentworth has some</p> <p>12 information on those statistics and voter turnout</p> <p>13 studies.</p> <p>14 Q. What studies did the Lieutenant Governor use to</p> <p>15 satisfy himself that Senate Bill 14 would not reduce</p> <p>16 turnout among minority voters?</p> <p>17 A. Well, Senator -- I mean, the Lieutenant</p> <p>18 Governor Dewhurst would have been a sitting member of</p> <p>19 the Committee of the Whole, so he would have reviewed</p> <p>20 all of those documents presented during that debate.</p> <p>21 Q. Can you identify any studies that he reviewed</p> <p>22 to satisfy himself that it would not reduce turnout</p> <p>23 among minority voters?</p> <p>24 MS. HALPERN: Object to the form. Object</p> <p>25 that it calls for speculation.</p>



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<p style="text-align: right;">193</p> <p>1 Q. (By Ms. Westfall) You may answer.</p> <p>2 A. I don't remember specific names of reports or</p> <p>3 studies. I do remember generally that Senator</p> <p>4 Wentworth's presentation included voter turnout in</p> <p>5 states that implemented voter ID.</p> <p>6 Q. In terms of the impact at the bottom of page</p> <p>7 265542, references the impact to voter ID on Hispanic,</p> <p>8 Black and poor voters. Do you see that?</p> <p>9 A. Uh-huh.</p> <p>10 Q. And do you see a reference that's data from</p> <p>11 Indiana?</p> <p>12 A. Yes.</p> <p>13 Q. And is it true that there was no data at that</p> <p>14 point gathered concerning Texas voters and the impact in</p> <p>15 Texas of Senate Bill 14?</p> <p>16 A. I don't know that no data had been collected --</p> <p>17 Q. But you're not aware of any, sitting here</p> <p>18 today, that you can recall?</p> <p>19 A. Well, it had not been implemented yet, so.</p> <p>20 Q. There wasn't any analysis while the bill was</p> <p>21 pending?</p> <p>22 A. Not that I can recall. But again, there was no</p> <p>23 testimony that I recall during that debate about actual</p> <p>24 individuals who would not be able to get an ID.</p> <p>25 MS. WESTFALL: I would object to that</p>	<p style="text-align: right;">195</p> <p>1 Q. (By Ms. Westfall) You've been handed what's</p> <p>2 been marked as Exhibit 167. Do you recognize this</p> <p>3 document?</p> <p>4 A. Looks like a memo, an e-mail that I wrote to</p> <p>5 several Senate staffers --</p> <p>6 Q. Well -- go ahead.</p> <p>7 A. -- relating to a proposed amendment that was</p> <p>8 likely to be offered allowing a person to vote without</p> <p>9 the photo ID but by signing an affidavit.</p> <p>10 Q. And you opined that that would gut the bill?</p> <p>11 A. It says, yes, it basically guts the bill.</p> <p>12 Q. How would it gut the bill?</p> <p>13 A. It means photo IDs are not necessary. And to</p> <p>14 the extent that this bill requires photo IDs at the</p> <p>15 poll, that amendment would say they're really not.</p> <p>16 Q. Why did you mention the DOJ loves affidavits?</p> <p>17 A. I don't recall specifically. I assume it was</p> <p>18 because they reference that language in other</p> <p>19 preclearance reports.</p> <p>20 Q. Did you believe that affidavits were relevant</p> <p>21 to analysis of SB 14 under Section 5 of the Voting</p> <p>22 Rights Act?</p> <p>23 A. I -- I can't recall specifically. I can say</p> <p>24 that all previous preclearance opinions are relevant</p> <p>25 whether future laws are going to be precleared, and that</p>
<p style="text-align: right;">194</p> <p>1 response as nonresponsive.</p> <p>2 Q. (By Ms. Westfall) Turning back to Texas</p> <p>3 00265543, I asked you about the strikeout before, and I</p> <p>4 believe you did not -- you did not make that strikeout;</p> <p>5 is that correct?</p> <p>6 A. I don't recall whether I did or not.</p> <p>7 Q. Do you know who would have made that strikeout?</p> <p>8 A. No. I mean, the e-mail says attached are</p> <p>9 Janice's notes, so I presume it would be Janice or</p> <p>10 someone Janice knows. And it may have been me. I</p> <p>11 honestly can't remember.</p> <p>12 Q. Did you agree with the strikeout that's</p> <p>13 identifying particular numbers of voters without ID</p> <p>14 might be, quote, potentially confusing, unquote?</p> <p>15 A. I don't know.</p> <p>16 Q. Did you anticipate that legislators might want</p> <p>17 to know the number of voters impacted by Senate Bill 14?</p> <p>18 A. Yes. And again, there -- I'm sure there was</p> <p>19 debate about that. It was a big part of the debate on</p> <p>20 the floor before the Committee of the Whole.</p> <p>21 Q. What did bill supporters do to respond to those</p> <p>22 questions?</p> <p>23 A. I can't remember specifics, all the specifics.</p> <p>24 MS. WESTFALL: Could you mark this?</p> <p>25 (Exhibit 167 marked for identification.)</p>	<p style="text-align: right;">196</p> <p>1 would be true in Texas and any other state.</p> <p>2 Q. Did you consider whether an affidavit provision</p> <p>3 might impact minority voters in a favorable way in</p> <p>4 Texas?</p> <p>5 A. I don't think I did. I think the consideration</p> <p>6 was what I said there is that it guts the bill in the</p> <p>7 sense that it turns a photo ID bill into a bill that</p> <p>8 does not require photo IDs.</p> <p>9 Q. Why did you send this e-mail concerning this</p> <p>10 particular amendment and not others?</p> <p>11 A. I don't recall.</p> <p>12 Q. Do you have concern -- did you have concern at</p> <p>13 the time that there might be support for this amendment?</p> <p>14 MS. HALPERN: Objection, assumes facts not</p> <p>15 in evidence.</p> <p>16 Q. (By Ms. Westfall) You may answer.</p> <p>17 A. I don't think that was my concern, but I don't</p> <p>18 recall specifically why this -- the proposed potential</p> <p>19 amendment warranted flagging. It could be that was the</p> <p>20 only amendment I was, you know, aware of might come up.</p> <p>21 I don't recall.</p> <p>22 Q. Did Texas voter registration applications</p> <p>23 require the voter's signature?</p> <p>24 A. Yes, I believe they did.</p> <p>25 Q. And so county election officials have a</p>

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<p style="text-align: right;">197</p> <p>1 signature of a voter on file in their offices; is that 2 right?</p> <p>3 <b>A. I think that's probably right.</b></p> <p>4 Q. What is early voting by mail?</p> <p>5 <b>A. A voter -- it means one of certain criteria can</b> 6 <b>request a ballot and complete that ballot and mail it</b> 7 <b>in.</b></p> <p>8 Q. And it's in Texas, early voting by mail is 9 not -- no excuse, correct?</p> <p>10 <b>A. I'm sorry?</b></p> <p>11 Q. Let me withdraw that question.</p> <p>12 You need to fall within a certain set of 13 categories to vote --</p> <p>14 <b>A. Correct.</b></p> <p>15 Q. -- early vote in Texas; is that right?</p> <p>16 <b>A. Correct.</b></p> <p>17 Q. When a voter --</p> <p>18 MR. WHITLEY: Objection. I think you're 19 using early vote and vote by mail synonymously, and you 20 may have misstated something, but I want to make sure 21 your question is clear.</p> <p>22 THE WITNESS: That's a good point.</p> <p>23 MS. WESTFALL: Thank you for the 24 clarification, Counsel.</p> <p>25 Q. (By Ms. Westfall) When a voter votes early</p>	<p style="text-align: right;">199</p> <p>1 Q. (By Ms. Westfall) Do you recognize these 2 documents?</p> <p>3 <b>A. Let's see. Exhibit 168 is an e-mail from</b> 4 <b>someone named Brent Connett. I don't know to whom, to</b> 5 <b>himself, but then that e-mail is in the possession looks</b> 6 <b>like Jason Baxter sent it to me, and I replied to all,</b> 7 <b>to those parties. Anyway, regarding suggested talking</b> 8 <b>points on election integrity. And then me advising</b> 9 <b>caution. And then 169 is the underlying e-mail, I</b> 10 <b>suppose, from Brent Connett to -- it says addressed to</b> 11 <b>Senators. And then there's an attachment analyses and</b> 12 <b>talking points on election integrity.</b></p> <p>13 MS. WESTFALL: And for the record, Exhibit 14 168 is Texas 00081510. Exhibit 169 is Texas 00080568 15 through 80572. Actually, '3. Sorry.</p> <p>16 Q. (By Ms. Westfall) Did the Texas Conservative 17 Coalition that wrote the attachment to Mr. Baxter's 18 e-mail express support for voter photo ID requirements?</p> <p>19 <b>A. It appears that, yes, they did.</b></p> <p>20 Q. Did the coalition urge adoption of such a 21 requirement as a means of combating noncitizens from 22 registering to vote?</p> <p>23 <b>A. I'm not seeing that language, but it must be in</b> 24 <b>there, because in my e-mail I say that's not what the</b> 25 <b>bill is about, to avoid that language. But I'm not</b></p>
<p style="text-align: right;">198</p> <p>1 by -- actually, what's the difference between voting 2 early by mail and absentee voting?</p> <p>3 <b>A. I believe, as far as I know, they're the same.</b></p> <p>4 <b>Absentee voting and mail-in voting are the same. And</b> 5 <b>your -- if the question is, can only certain categories</b> 6 <b>of people cast a mail-in ballot, the answer is yes.</b> 7 <b>It's a pretty broad category of people. Those, I think,</b> 8 <b>over 65, those with a disability, although I'm sure that</b> 9 <b>term is defined. It think it's largely self-defined by</b> 10 <b>the voter. And those who are residents to Texas but</b> 11 <b>temporarily out of the state.</b></p> <p>12 Q. For a mail-in ballot, how does the ballot board 13 determine whether the ballot is valid?</p> <p>14 <b>A. I guess I'm not a hundred percent clear. I</b> 15 <b>would imagine they compare signatures.</b></p> <p>16 MS. WESTFALL: Could you also mark this 17 one? These two, doesn't matter what order. 18 (Exhibit 168 and 169 marked for 19 identification.)</p> <p>20 Q. (By Ms. Westfall) You've been handed what's 21 been marked as 168 and 169.</p> <p>22 MS. HALPERN: I've only been handed 169 23 apparently.</p> <p>24 MS. WESTFALL: Didn't throw it far enough.</p> <p>25 MS. HALPERN: There you go.</p>	<p style="text-align: right;">200</p> <p>1 <b>finding it in the attachment.</b></p> <p>2 Q. Thank you. Was combating noncitizen voter 3 registration one of the purposes of SB 14?</p> <p>4 <b>A. I think the purpose was to combat ineligible</b> 5 <b>voters.</b></p> <p>6 Q. Did that include non-U.S. citizens from 7 participating in elections?</p> <p>8 <b>A. I think noncitizens are a subset of ineligible</b> 9 <b>voters.</b></p> <p>10 Q. So the answer would be yes?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. Do you see that at 168, you commented on the 13 talking points, and you advised or recommended to 14 Mr. Baxter and Ms. Montagne and Mr. LaRue that talk of 15 the illegals and registration, to quote you, "be 16 avoided." Do you see that?</p> <p>17 <b>A. It doesn't say be avoided. It says, "Avoid</b> 18 <b>talking about illegals and registration. We're not</b> 19 <b>doing this to crack down on illegals but to generally</b> 20 <b>strengthen the security and integrity of the voting</b> 21 <b>process. This is a bill about voting, not registering,</b> 22 <b>although some mention of registration fraud is useful to</b> 23 <b>show that fraud exists generally in the system."</b></p> <p>24 Q. Why did you write this?</p> <p>25 <b>A. I think I wrote it -- I'm not familiar even</b></p>

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<p style="text-align: right;">201</p> <p>1 today, and I don't think I was familiar with the group 2 who sent the document to Texas Conservative Coalition or 3 Mr. Brent Connett. I don't think I directly received 4 this information. All the people that I include on that 5 e-mail worked for Senator Williams, and so I'm not clear 6 who received it beyond Senator Williams. But I think 7 what I say in the e-mails is what I meant and it's true 8 today, despite some efforts by some to characterize it 9 as such, it's not an anti-immigrant or anti-illegals, 10 quote/unquote, illegals bill. It's about strengthening 11 the security and the integrity of the voting system. So 12 to the extent I was advising Senate staff who were then 13 advising their boss, I wanted to make sure that people 14 were careful about how they couched the bill, especially 15 if they weren't the sponsor of the bill, and that they 16 used rhetoric that was responsible and accurate. 17 Q. How do you know that cracking down on illegals 18 and registration was not a purpose of Senate Bill 14? 19 A. It was never -- I only know what I know from my 20 conversations with senators and staff and what I 21 witnessed publicly, and at no time did I see or witness 22 any of the above-mentioned people talk about immigration 23 or illegal or any of the other similar rhetoric as the 24 purpose of the bill. 25 Q. Is it fair to say that there were some groups</p>	<p style="text-align: right;">203</p> <p>1 members on both sides of the issue across the states. 2 Q. And were you concerned about quality of the 3 dialogue or any other repercussions that might come from 4 this type of rhetoric being used with regard to SB 14? 5 A. Yeah, I think it's safe to say that I was 6 concerned about the quality of the rhetoric. Anytime 7 you have a bill with all the Republicans on one side and 8 all the Democrats on the other, it tends to be 9 contentious, and the rhetoric in those situations can 10 escalate. And I try to see myself as a sort of neutral 11 observer and legal advisor on these matters. And to the 12 extent we can avoid overheated rhetoric, that's always 13 in the best interest of the Legislature, I think. 14 Q. And beside Exhibit 169 and the cover e-mail 15 sent by Brent Connett and the attachment thereto, had 16 you heard other senators or their staff frame SB 14 as 17 something that would combat illegal voting and illegals 18 from voting and participating in elections? 19 A. I'm sure there are instances -- what I recall 20 is statements to combat ineligible voters. And it's 21 possible that noncitizens were listed as part of those, 22 that group, but I can't remember specific instances now. 23 Q. If there were some supporters of SB 14 who 24 thought it would go after combating illegals and 25 noncitizens voting, and that was a faction who supported</p>
<p style="text-align: right;">202</p> <p>1 like the Texas Conservative Coalition who believed that 2 Senate Bill 14 would further the purpose of cracking 3 down on noncitizens voting? 4 A. I guess, yes, there's groups who interpret the 5 bill all manner of ways. 6 Q. And you just testified that you thought a more 7 responsible way was to discuss it in terms of, as you 8 mention in the e-mail, as it relates to voting. Why 9 would it be irresponsible to talk about Senate Bill 14 10 cracking down on illegals or noncitizens voting? 11 A. Well, it's just inaccurate for one. Again, I 12 think as I said here, that was not my understanding of 13 the bill's purpose or intent. So to the extent it's 14 characterized as the intent, that's inaccurate. And 15 again, we all know that there's inflammatory language 16 used by parties on both sides. And certainly, the term 17 illegal and other terms used by people in and around the 18 Capitol are offensive to others. And to the extent we 19 could avoid inflammatory rhetoric, that's always my 20 interest. 21 Q. And why were you concerned with the possibility 22 that inflammatory rhetoric, as you called it, would be 23 used in the SB 14? 24 A. There was inflammatory rhetoric on the floor of 25 the Senate between senators, so of course there was from</p>	<p style="text-align: right;">204</p> <p>1 SB 14, why wouldn't you let that message continue in the 2 public domain? 3 A. Assuming that we're talking about people who 4 are not citizens of Texas, I think it's fair to say we 5 should not allow noncitizens of Texas to vote in Texas 6 elections. That is part of the intent of SB 14. But as 7 I said, the group of ineligible voters is much larger 8 than that. 9 To the extent you want to talk about 10 people from -- not -- that are not citizens of Texas 11 voting in Texas elections and that being a problem, that 12 seems totally fair to me. 13 Q. But here in this e-mail in 168, you were 14 concerned about talk about illegals. Who were you 15 referring to when you said illegals? 16 A. I think I -- it appears I was quoting from the 17 document, and I'm also referring -- suggesting that 18 there's not a discussion about registration, because 19 neither of those things are the point of this bill. 20 Q. But by illegals, were you referring to persons 21 who were not U.S. citizens? 22 A. I don't know. I don't know. Again, I think my 23 impression is that I was quoting from the document, and 24 so I'm not sure what illegals referred to. Yes, 25 generally speaking, I think people who use the term</p>

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<p style="text-align: right;">205</p> <p>1 refer to people who are not United States citizens.</p> <p>2 Q. Did you have any concern or was any of your</p> <p>3 motivation in writing the e-mail at Exhibit 168 based on</p> <p>4 concern that talk about illegals could be construed as</p> <p>5 racially discriminatory?</p> <p>6 A. I don't know if that was a specific concern of</p> <p>7 mine. I think the concern, again, was that people</p> <p>8 accurately framed the bill about what the bill actually</p> <p>9 did and not what one line of one talking -- one, you</p> <p>10 know, document of talking points from an outside group</p> <p>11 said it might be about, but that it'd be based on what</p> <p>12 the senators actually said and the sponsors of the bill</p> <p>13 actually said.</p> <p>14 Q. And you -- so the purpose of the e-mail was to</p> <p>15 bring it back to the public discussion about the</p> <p>16 purposes of the bill and not as framed by groups such as</p> <p>17 the Travis Conservative Coalition?</p> <p>18 A. Again, I can't specifically recall what I was</p> <p>19 thinking at the time that I got this, but that sounds</p> <p>20 roughly correct.</p> <p>21 Q. And what was the purpose of kind of reframing</p> <p>22 the debate and keeping it on the public purposes of</p> <p>23 Senate Bill 14?</p> <p>24 A. I don't know. I mean, I just -- I was just</p> <p>25 responding to the document that was sent to me.</p>	<p style="text-align: right;">207</p> <p>1 e-mail from me.</p> <p>2 Q. Who else would have developed this plan besides</p> <p>3 you?</p> <p>4 A. Senator Fraser and his staff, any of the</p> <p>5 senators listed here, perhaps Blaine Brunson or Julia</p> <p>6 Rathgeber.</p> <p>7 Q. But is it more likely that it came from your</p> <p>8 office given that you were the point person for the</p> <p>9 elections and voting issues?</p> <p>10 A. It's unlikely I would have done all this</p> <p>11 without significant input from the bill sponsor and the</p> <p>12 senators listed. It's not my place to tell senators</p> <p>13 what they're going to be doing during debate of a bill.</p> <p>14 Q. But was it your role to kind of organize,</p> <p>15 coordinate and communicate the plan to others?</p> <p>16 A. At least to these people, that seems fair.</p> <p>17 Q. Do you see that under "floor tasks" in the</p> <p>18 parentheses, you urge senators to emphasize the</p> <p>19 detection and deterrence of fraud and protect public</p> <p>20 confidence in elections?</p> <p>21 A. Yes.</p> <p>22 Q. Why did you stress the need for senators to</p> <p>23 emphasize those points?</p> <p>24 A. Because that was the goal of the bill as I</p> <p>25 understood it.</p>
<p style="text-align: right;">206</p> <p>1 MS. WESTFALL: Could you mark this?</p> <p>2 (Exhibit 170 marked for identification.)</p> <p>3 Q. (By Ms. Westfall) You've been handed what's</p> <p>4 been marked as 170, which is Texas 00081575. Do you</p> <p>5 recognize this document?</p> <p>6 A. Looks like an e-mail from myself to various</p> <p>7 Senate staffers and my chief of staff and policy</p> <p>8 director laying out, quote, the plan for Tuesday, which</p> <p>9 I assume would have been floor debate and the Committee</p> <p>10 of the Whole. And it lays out invited witnesses,</p> <p>11 certain roles different senators would play, some other</p> <p>12 items.</p> <p>13 Q. Who was Katie Ogden?</p> <p>14 A. Katie Ogden worked for Senator Wentworth, I</p> <p>15 believe, as chief of staff.</p> <p>16 Q. Is it fair to say that this e-mail is sort of</p> <p>17 saying that plan for testimony and how consideration of</p> <p>18 the bill would occur?</p> <p>19 A. To the extent you can have a plan and execute</p> <p>20 it on the floor of the Senate, I suppose it is an</p> <p>21 attempt to -- at best, it's an outline of how things</p> <p>22 might go.</p> <p>23 Q. Were you responsible for that outline?</p> <p>24 A. I honestly can't remember if these are my ideas</p> <p>25 or if this is me passing a message, but this is an</p>	<p style="text-align: right;">208</p> <p>1 Q. Were you concerned that they may -- they might</p> <p>2 say other things on the floor of the senate about other</p> <p>3 reasons for SB 14 being considered?</p> <p>4 A. I -- even if I had concerns about a senator --</p> <p>5 what a senator might say, there's no stopping a senator</p> <p>6 who wants to say something. But yeah, to the extent</p> <p>7 that senators were looking for direction, I think this</p> <p>8 was an attempt to remind people what the point of this</p> <p>9 bill is.</p> <p>10 Q. And again, as with the previous exhibit, were</p> <p>11 you concerned that there might on the Senate floor be</p> <p>12 expressions of support for Senate Bill 14 as a basis of</p> <p>13 cracking down on illegal non-U.S. citizens in this</p> <p>14 country?</p> <p>15 A. I don't know that I was concerned about it,</p> <p>16 again, because I don't recall that I had heard it from</p> <p>17 many senators or their staff. So I don't -- I don't</p> <p>18 think I would say it was a concern of mine.</p> <p>19 Q. So if detecting and deterring fraud and</p> <p>20 protecting public confidence was the sole purposes to</p> <p>21 SB 14, why were you having to remind staffers to let</p> <p>22 their bosses know that these were the purposes of the</p> <p>23 bill?</p> <p>24 A. One, I would say it wasn't necessarily the sole</p> <p>25 purpose, but it's in my estimation the main purpose.</p>

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<p style="text-align: right;">209</p> <p>1 But more importantly, I think senators have hundreds and 2 hundreds and hundreds of bills that they consider, and 3 while this is a very important bill, there were lots of 4 very important bills and items before the senators 5 during that session. Plus, their day jobs, plus their 6 family lives, there's a lot going on. And so we do this 7 for all sorts of bills, not just this bill, reminding 8 senators what the bill does and how it might be 9 discussed and so forth.</p> <p>10 MS. WESTFALL: We're going to stop the 11 highly confidential designation right now.</p> <p>12 MS. HALPERN: How long have we been going 13 since the last break? I lost track of where we are.</p> <p>14 MR. WHITLEY: 45 minutes.</p> <p>15 MS. WESTFALL: Okay. Okay to proceed? Do 16 you want to go off the record and have him calculate it 17 or do you want to take a break or do you want to --</p> <p>18 MS. HALPERN: Yeah, I'd like a five-minute 19 break.</p> <p>20 MS. WESTFALL: Okay. That's fine. 21 (Recess from 3:33 to 3:45 p.m.) 22 (Exhibit 171 marked for identification.)</p> <p>23 Q. (By Ms. Westfall) You've been handed what's 24 been marked 171. Do you recognize this document? 25 A. It looks like the legislative history of Senate</p>	<p style="text-align: right;">211</p> <p>1 Q. But can you imagine, sitting here today, that 2 there could have been a less restrictive bill that could 3 have accomplished that same objective of SB 14? 4 MS. HALPERN: Objection, relevance. 5 Q. (By Ms. Westfall) You may answer. 6 A. There would -- there could have been a less 7 restrictive bill. I am not clear that that would have 8 been adequately secure or resulted in adequately secure 9 elections. 10 Q. Was there any discussion in the Senate of how 11 to accomplish the goals of photo ID, generally, 12 requirements by less restrictive means? 13 A. Yes. I think a lot of the debate in the 14 Senate, and from what I saw at the House, there was that 15 debate. Certainly opponents of the bill had a lot of 16 suggested amendments, some of which were adopted and a 17 lot of which were not. So yes, there was discussion 18 about that. 19 Q. Which ones were adopted to make the bill less 20 restrictive? 21 A. I'll have to look to be sure. In the Senate? 22 Q. In the Senate. 23 A. Two I can think of, off the top of my head, I 24 think the disability exception and the addition of CHLs 25 as acceptable ID. There may have been others. Maybe --</p>
<p style="text-align: right;">210</p> <p>1 Bill 14. 2 Q. Right. Are you aware that Senator Fraser 3 answered "I am not advised throughout the debate on 4 Senate Bill 14"? 5 A. I remember that he gave that answer to some 6 questions. 7 Q. Did you know in advance that he was going to 8 take that approach, in terms of answering questions, 9 during the consideration of SB 14 in Committee of the 10 Whole? 11 A. No. 12 Q. Did anyone know he was going to have those 13 answers? 14 A. I don't know. 15 Q. In advance? Was Senator Fraser instructed by 16 anybody to answer in that manner? 17 MS. HALPERN: Objection, calls for 18 speculation. 19 Q. (By Ms. Westfall) You may answer. 20 A. Not that I know of. 21 Q. Was SB 14 the least restrictive option to 22 achieve the goal of preventing voter fraud? 23 A. I don't know. I mean, I suppose it could have 24 been more or less restrictive, but I'm not sure how that 25 would have affected the security of the elections.</p>	<p style="text-align: right;">212</p> <p>1 if I could just a second look at the bill. My memory is 2 that the language in the bill referring to recently 3 expired IDs was a product of a floor amendment from a 4 minority member. Without going through every individual 5 amendment, those are three examples I can think of. 6 Q. Are you aware of whether Mr. Dewhurst had any 7 nonpublic conversations with other members or staff 8 about amendments to SB 14? 9 A. I'm not aware of any conversations. 10 Q. Were you part of any of those conversations 11 with Mr. Dewhurst and other members about amendments? 12 MS. HALPERN: Objection, asked and 13 answered. 14 A. Yeah. I'm not aware. 15 Q. (By Ms. Westfall) You can answer. 16 Were you on the Senate floor when SB 14 17 was being considered by the Committee of the Whole? 18 A. Yes. 19 Q. During for consideration, did Senator Williams 20 ask Ann McGeehan to conduct additional analysis of which 21 registered voters did not have driver licenses? 22 A. I don't recall. I believe Senator Williams was 23 chair of Transportation at the time, so he would likely 24 have had an interest in issues related to DPS-issued 25 identification, but I don't recall that specific</p>



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<p style="text-align: right;">213</p> <p>1 question.</p> <p>2 Q. Were you ever a party to conversations with the</p> <p>3 Office of the Secretary of State's concerning analysis</p> <p>4 of voters without a driver license?</p> <p>5 A. Again, it's possible. I think I mentioned it</p> <p>6 earlier in my deposition. I recall a meeting with Ann</p> <p>7 McGeehan. I think it involved how people voted or</p> <p>8 whether those people, voters had identification</p> <p>9 typically. But I cannot remember the specifics of that</p> <p>10 conversation.</p> <p>11 Q. Do you recall whether that conversation was</p> <p>12 after the Senate considered SB 14 or before?</p> <p>13 A. I don't recall.</p> <p>14 MS. WESTFALL: Could you mark this?</p> <p>15 (Exhibit 172 marked for identification.)</p> <p>16 Q. (By Ms. Westfall) You've been handed what's</p> <p>17 been marked as 172. Could you take a look at this</p> <p>18 document and let me know when you've had a chance to</p> <p>19 review it.</p> <p>20 A. It looks like a chain of e-mails among</p> <p>21 Secretary of State staff regarding the number of</p> <p>22 registered voters that have not been issued a driver's</p> <p>23 license or personal ID card by DPS.</p> <p>24 Q. Have you ever seen this document before today?</p> <p>25 A. I can't recall if I have or not. I can't</p>	<p style="text-align: right;">215</p> <p>1 results prior to today, even if you hadn't seen this</p> <p>2 particular set of e-mails?</p> <p>3 A. I can't recall. Again, it's possible that Ann</p> <p>4 or the Secretary of State's Office had some of these</p> <p>5 numbers in previous meetings I had with them, but I</p> <p>6 don't recall specific instances of that.</p> <p>7 Q. You were involved in preparation of Defendants'</p> <p>8 interrogatory responses to the United States</p> <p>9 interrogatory requests in this action; is that correct?</p> <p>10 A. Yes, I believe I was.</p> <p>11 Q. And as part of those responses, did you provide</p> <p>12 information about occasions on which analysis of which</p> <p>13 voters have state-issued forms of ID had been conducted?</p> <p>14 A. I know I assisted with the interrogatories to</p> <p>15 the extent they requested documents or information from</p> <p>16 my -- from the Lieutenant Governor's Office, and I can't</p> <p>17 remember if what you described would have been a</p> <p>18 response to that or not.</p> <p>19 MS. WESTFALL: Could you please mark this?</p> <p>20 (Exhibit 173 marked for identification.)</p> <p>21 Q. (By Ms. Westfall) You have been handed what's</p> <p>22 been marked as Exhibit 173. Do you recognize this</p> <p>23 document?</p> <p>24 A. It looks like a copy of the Defendants'</p> <p>25 Objections and Responses to Plaintiffs and Intervenors</p>
<p style="text-align: right;">214</p> <p>1 recall. It seems like it would have -- if it was a</p> <p>2 public document, it would have come up in either the</p> <p>3 House or Senate debate, so it's possible I heard</p> <p>4 reference to it, but I can't recall if I saw it</p> <p>5 specifically.</p> <p>6 MS. WESTFALL: For the record, Exhibit 172</p> <p>7 is Bates number TX00 107733 through 107735.</p> <p>8 Q. (By Ms. Westfall) Have you ever seen this</p> <p>9 document not in the public debate?</p> <p>10 A. I don't think so, but I can't recall. Again,</p> <p>11 it's -- I know that I met with Ann McGeehan, and I think</p> <p>12 I talked about issues similar to this, I can't recall if</p> <p>13 this is a response to a question I raised or a question</p> <p>14 someone else raised, and I'm not a recipient anywhere on</p> <p>15 here, so I don't remember seeing the document before,</p> <p>16 no.</p> <p>17 Q. Do you see the date of this document, the dates</p> <p>18 of these e-mails?</p> <p>19 A. The document is undated, but the e-mails are</p> <p>20 January 27th, February 1st, and February 1st of 2011.</p> <p>21 Q. So is it fair to say that these e-mails were</p> <p>22 drafted after the Senate consideration of Senate Bill</p> <p>23 14?</p> <p>24 A. Yes.</p> <p>25 Q. Had you ever heard any of these numbers or</p>	<p style="text-align: right;">216</p> <p>1 First Set of Interrogatories.</p> <p>2 Q. Have you seen this document before?</p> <p>3 A. I'm not sure I've seen this version or the --</p> <p>4 I'm assuming this is the final version. I think I saw</p> <p>5 it, but I can't be a hundred percent sure.</p> <p>6 Q. Turning your attention to Page 6, do you see</p> <p>7 you are listed?</p> <p>8 A. Yes.</p> <p>9 Q. And do you see it indicates that you provided</p> <p>10 assistance with responses to interrogatories number 2,</p> <p>11 17, 18, 19?</p> <p>12 A. Yes.</p> <p>13 Q. Turning your attention to Page 59, which is</p> <p>14 where the response to Interrogatory 17 is located.</p> <p>15 A. Uh-huh.</p> <p>16 Q. Do you see that you contributed responses to</p> <p>17 Interrogatory 17, 18 -- 17 and 18, which requests</p> <p>18 information about analysis of which voters don't have</p> <p>19 certain forms of ID?</p> <p>20 A. Yes.</p> <p>21 Q. Could you describe information that you</p> <p>22 provided to respond to Interrogatory requests 17 and 18?</p> <p>23 A. I don't recall that I provided any information.</p> <p>24 I can't remember that we had anything responsive or not.</p> <p>25 Q. Do you believe that the indication on Page 6,</p>

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<p style="text-align: right;">217</p> <p>1 that you provided information for numbers 2, 17, 18, and 2 19, was in error? 3 <b>A. I don't believe that. Let me double check. It</b> 4 <b>says the following persons assisted generally in either</b> 5 <b>providing information or preparing responses. I'm not</b> 6 <b>sure which one of those I fall into, but I do remember</b> 7 <b>helping with some of these.</b> 8 Q. Did you do any drafting, do you recall, for the 9 responses to 17 and 18? 10 <b>A. I don't recall doing any specific drafting.</b> 11 Q. Did you provide information? 12 <b>A. I think it's more likely I would have provided</b> 13 <b>any information I had in my -- had available to me.</b> 14 Q. And as evidenced on the face of the responses 15 to 17, which requests information about analysis of 16 voters without state forms of ID, there is no 17 information disclosed about the matching analysis in 18 Exhibit 172 which you just reviewed, correct? 19 <b>A. Let me see.</b> 20 MS. HALPERN: Counsel, I'm going to 21 object. I want the record to reflect that this witness 22 has not identified as having received Exhibit 172. He's 23 neither to nor from nor cc'd. 24 MS. WESTFALL: I'm asking about 25 interrogatory responses to which Defendants have</p>	<p style="text-align: right;">219</p> <p>1 <b>documents in our possession, and I don't recall</b> 2 <b>providing any specific input otherwise to the response.</b> 3 Q. (By Ms. Westfall) Do you have any information 4 about why the analysis included in Exhibit 172 was not 5 listed in this interrogatory response? 6 <b>A. It doesn't appear to have been sent to any</b> 7 <b>legislator from the face of this document, this e-mail.</b> 8 <b>It looks like internal e-mails by the Secretary of</b> 9 <b>State.</b> 10 Q. Do you have any information about why -- is it 11 your understanding the Secretary of State is a defendant 12 in this action? 13 <b>A. I'm not sure that's correct, but I will take</b> 14 <b>your word for it.</b> 15 Q. I will represent to you -- 16 <b>A. Thank you.</b> 17 Q. -- because the caption is condensed, the 18 Secretary of State is a defendant in this action. 19 MS. HALPERN: I'm going to object to your 20 question, Counsel, because it calls for speculation on 21 the part of this witness, since he is not a defendant 22 and obviously don't know. 23 Q. (By Ms. Westfall) You may answer. 24 <b>A. What was the question?</b> 25 Q. Do you know why analysis in 172 was not</p>
<p style="text-align: right;">218</p> <p>1 indicated he has participated in. 2 MS. HALPERN: Well, I understand that, and 3 I think you're mischaracterizing the interrogatory as 4 well. Certainly, this Exhibit 172 doesn't have anything 5 about demographic characteristics in it. At best, it 6 has numbers. And I, frankly, don't understand the 7 exhibit to the extent that the first row in each query, 8 which is labeled Number of Voters With No -- presumably, 9 that means driver's license or ID number -- that number 10 is the sum of the two rows below it, numbers that did 11 not match and numbers that did match. 12 MS. WESTFALL: Okay. Well, you're not 13 here to testify, but I appreciate your comments on the 14 exhibit. 15 MS. HALPERN: Well, I just don't want you 16 mischaracterizing his role in the interrogatory 17 responses, asking about number or demographic 18 characteristics, when this aide doesn't do either. He 19 didn't see the document. 20 MS. WESTFALL: Well, you're not -- you're 21 not here to testify about this document, so I'm going to 22 move to strike those comments. 23 <b>A. So to the extent my office was asked about</b> 24 <b>whether we possessed documents described by</b> 25 <b>interrogatory 17 and 18, I don't think we had any</b></p>	<p style="text-align: right;">220</p> <p>1 included in the response to the Interrogatory 17 and 18? 2 <b>A. I do not know. I know I did not provide it</b> 3 <b>because I do not possess it.</b> 4 MS. WESTFALL: Could you please mark this? 5 (Exhibit 174 marked for identification.) 6 Q. (By Ms. Westfall) You've been handed what's 7 been marked as Exhibit 174. Do you recognize this 8 document? 9 <b>A. It appears to be the Senate Journal entry</b> 10 <b>from -- or at least part of Wednesday, January 26, 2011.</b> 11 Q. Did the Lieutenant Governor circulate to the 12 Republican caucus written recommendations on how to vote 13 on certain amendments? 14 <b>A. Not that I'm aware.</b> 15 Q. Ever? 16 <b>A. Not that I'm aware. And as a practical matter,</b> 17 <b>from my experience, generally on the floor of the</b> 18 <b>Senate, which was every day in recent sessions,</b> 19 <b>amendments are not generally known until the senator</b> 20 <b>submits it, which could be seconds before they are</b> 21 <b>considered. So as a practical matter, I don't think</b> 22 <b>there would have been time to submit written positions</b> 23 <b>on how to vote on amendments.</b> 24 Q. I direct your attention to Page 137 of this 25 Senate Journal.</p>

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<p style="text-align: right;">221</p> <p>1 A. All right.</p> <p>2 Q. Do you see that it lists a floor amendment</p> <p>3 offered by Senator Duncan --</p> <p>4 A. Yes.</p> <p>5 Q. -- related to indigent voters?</p> <p>6 A. Yes.</p> <p>7 Q. Would this amendment have required the counting</p> <p>8 of provisional ballots of individuals, voters who attest</p> <p>9 they are indigent and do not have ID?</p> <p>10 A. If the person executed an affidavit stating</p> <p>11 that they were indigent or had a religious objection or</p> <p>12 were not otherwise challenged, then it looks like, yes,</p> <p>13 that that provisional ballot would have been counted.</p> <p>14 Q. This amendment was adopted by the Senate, was</p> <p>15 it not?</p> <p>16 A. I don't have the vote on that.</p> <p>17 Q. Sir, does it indicate, on Page 138, the vote?</p> <p>18 A. I'm sorry. Yes.</p> <p>19 Q. Was it adopted by the Senate?</p> <p>20 A. Yes.</p> <p>21 Q. Was this provision included in the final</p> <p>22 version of SB 14 that's signed into law?</p> <p>23 A. I do not believe it was.</p> <p>24 Q. Had this been adopted in the final version of</p> <p>25 the bill signed into law, would it have reduced the</p>	<p style="text-align: right;">223</p> <p>1 Q. But at the time Senate Bill 14 was adopted by</p> <p>2 the Legislature, that was not the case, correct?</p> <p>3 A. Correct.</p> <p>4 Q. Would adopting this floor amendment Number 12</p> <p>5 have interfered with the effectiveness of the bill?</p> <p>6 A. Effectiveness is pretty broad. It would have</p> <p>7 been a costlier bill. It would have potentially been a</p> <p>8 larger burden on counties or other agencies. I'm not</p> <p>9 sure what other adverse effects might have resulted.</p> <p>10 I'm not sure it would have affected the security of</p> <p>11 elections, but I can't say that it wouldn't undermine</p> <p>12 the effectiveness of the bill as a whole.</p> <p>13 Q. Given that you were aware of the cost of</p> <p>14 obtaining a birth certificate and you circulated that</p> <p>15 memo that you testified about earlier today, why did the</p> <p>16 Legislature not adopt Amendment Number 12?</p> <p>17 A. I can't recall. I don't know.</p> <p>18 Q. Turning your attention to Page 121, do you see</p> <p>19 there is an amendment that was offered by Senator Van de</p> <p>20 Putte?</p> <p>21 A. I do.</p> <p>22 Q. And this would have substituted -- well, if you</p> <p>23 could review this amendment and let me know when you've</p> <p>24 had a chance.</p> <p>25 A. (Reviewing document.) Okay.</p>
<p style="text-align: right;">222</p> <p>1 burden on poor voters?</p> <p>2 A. I think it would -- would it have reduced the</p> <p>3 burden on poor voters if this had been adopted? It's</p> <p>4 possible.</p> <p>5 Q. Are poor voters disproportionately minority?</p> <p>6 A. I don't know that to be true, but I suspect</p> <p>7 that to be true.</p> <p>8 Q. May I direct your attention to Page 118 of</p> <p>9 Exhibit 174.</p> <p>10 A. Okay.</p> <p>11 Q. Do you see that there's a floor amendment</p> <p>12 Number 12 offered by Senator Davis to prohibit state</p> <p>13 agencies from charging fees for the issuance of</p> <p>14 acceptable forms of photo ID under Senate Bill 14 or for</p> <p>15 underlying documentation --</p> <p>16 A. Yes.</p> <p>17 Q. -- to get those forms of ID?</p> <p>18 A. Yes.</p> <p>19 Q. Was this amendment adopted by the Senate?</p> <p>20 A. No.</p> <p>21 Q. Had this been adopted, would this have reduced</p> <p>22 the burden on poor voters?</p> <p>23 A. It is possible, although, again, today, I think</p> <p>24 the charge for a birth certificate is three dollars or</p> <p>25 zero dollars depending on the county.</p>	<p style="text-align: right;">224</p> <p>1 Q. Would this amendment, in essence, have provided</p> <p>2 the same forms of ID that were part of SB 362?</p> <p>3 A. It looks to be very similar to 362. One photo</p> <p>4 or two nonphoto, which, again, was, at the time, opposed</p> <p>5 by every Democrat that I recall.</p> <p>6 Q. But in answer to my question, it was very</p> <p>7 similar to Senate Bill 362?</p> <p>8 A. It is similar.</p> <p>9 Q. In terms of the ID. And this amendment was not</p> <p>10 adopted by the Senate, correct?</p> <p>11 A. It was not.</p> <p>12 Q. Do you know why the Legislature didn't adopt</p> <p>13 this amendment?</p> <p>14 A. I can't recall the debate, so no, I don't know.</p> <p>15 Q. Turning your attention to Page 123, which is</p> <p>16 something you testified about earlier, the Floor</p> <p>17 Amendment Number 18 concerning concealed handgun</p> <p>18 licenses?</p> <p>19 A. Yes.</p> <p>20 Q. Do you see that that amendment was adopted?</p> <p>21 A. Unanimously, yes.</p> <p>22 Q. Do you know why that was adopted?</p> <p>23 A. I can't recall, no. I don't know.</p> <p>24 Q. And do you know whether other amendments to</p> <p>25 allow the use of Medicare cards and student IDs were</p>

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<p style="text-align: right;">225</p> <p>1 also offered?</p> <p>2 <b>A. Do I know why?</b></p> <p>3 Q. No. Do you know -- are you aware that there</p> <p>4 were other amendments to include Medicare cards and</p> <p>5 student ID cards that were offered on the Senate floor?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. And were those amendments adopted by the</p> <p>8 Senate?</p> <p>9 <b>A. No.</b></p> <p>10 Q. Are you aware of any facts or basis for</p> <p>11 including concealed handguns as an acceptable form of</p> <p>12 ID, but not Medicare cards or student ID cards?</p> <p>13 <b>A. Well, from my own knowledge, I would -- I know</b></p> <p>14 <b>that the concealed handgun licenses are issued by DPS,</b></p> <p>15 <b>which also issues driver licenses and election ID cards</b></p> <p>16 <b>and personal identification cards. I know they have</b></p> <p>17 <b>personal -- identifying information and expiration dates</b></p> <p>18 <b>on their face. Medicare cards, I'm honestly not sure</b></p> <p>19 <b>what those look like. I'm not sure if they include</b></p> <p>20 <b>expiration dates or other identifying information.</b></p> <p>21 <b>Students IDs, I've talked about before. I</b></p> <p>22 <b>think even if as in the proposed amendment in the</b></p> <p>23 <b>Senate, you say accredited public university in Texas,</b></p> <p>24 <b>that's still a very, very large pool of potential</b></p> <p>25 <b>identifications, which may or may not have security</b></p>	<p style="text-align: right;">227</p> <p>1 <b>used in other areas, looking at the text of Senator</b></p> <p>2 <b>Ellis's amendment, it required an annual report, which</b></p> <p>3 <b>would already be unusual in the legislatures, and we</b></p> <p>4 <b>meet every other year, and a list of seven items that</b></p> <p>5 <b>would have to be included in that annual report,</b></p> <p>6 <b>including the number of residents eligible to vote, the</b></p> <p>7 <b>average wait time to obtain certain types of documents.</b></p> <p>8 <b>So yeah, I think, assuming the Secretary</b></p> <p>9 <b>of State could even determine these numbers, they seem</b></p> <p>10 <b>like a -- it would be pretty time consuming to get all</b></p> <p>11 <b>seven of these items produced on an annual basis.</b></p> <p>12 Q. Was there any concern that the data gathered</p> <p>13 would show a discriminatory impact of Senate Bill 14 on</p> <p>14 minority voters?</p> <p>15 <b>A. I'm not aware of any such concern.</b></p> <p>16 <b>MS. WESTFALL: Could you please mark this?</b></p> <p>17 <b>(Exhibit 175 marked for identification.)</b></p> <p>18 <b>Q. (By Ms. Westfall) You've been handed what's</b></p> <p>19 <b>been marked as Exhibit 175. Did you recognize this</b></p> <p>20 <b>document?</b></p> <p>21 <b>A. It looks like a press release by the Lieutenant</b></p> <p>22 <b>Governor.</b></p> <p>23 Q. Did you see a draft of this before it was</p> <p>24 finalized?</p> <p>25 <b>A. I don't recall if I did or not.</b></p>
<p style="text-align: right;">226</p> <p>1 <b>elements or expiration dates or any other number of</b></p> <p>2 <b>identifying characteristics.</b></p> <p>3 Q. Were there any forms of ID issued by DPS that</p> <p>4 were -- are not acceptable photo IDs under Senate Bill</p> <p>5 14?</p> <p>6 <b>A. I'm not aware of any.</b></p> <p>7 Q. Would you turn your attention to 130. Do you</p> <p>8 see that Senator Ellis offered a Floor Amendment Number</p> <p>9 130?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. Pertaining to the collection of data?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. And requiring the Secretary of State to conduct</p> <p>14 studies related to eligible voters?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. And this amendment was rejected, correct?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. This was not included in the final version of</p> <p>19 Senate Bill 14 signed about the Governor; is that right?</p> <p>20 <b>A. Correct.</b></p> <p>21 Q. Had Floor Amendment Number 30 been adopted,</p> <p>22 would it have interfered with the effectiveness of</p> <p>23 Senate Bill 14?</p> <p>24 <b>A. Yes, to the extent it required a large devotion</b></p> <p>25 <b>of resources by the Secretary of State that might be</b></p>	<p style="text-align: right;">228</p> <p>1 Q. Did you write this?</p> <p>2 <b>A. No.</b></p> <p>3 Q. Did you advise Mike Walz, who is listed as a</p> <p>4 contact here, about the contents of this release?</p> <p>5 <b>A. It is possible, but I do not recall seeing this</b></p> <p>6 <b>or advising on this.</b></p> <p>7 <b>Q. Do you see that in the second paragraph, it</b></p> <p>8 <b>states, "A voter ID will ensure that only U.S. citizens</b></p> <p>9 <b>who are legally eligible vote in Texas elections"?</b></p> <p>10 <b>A. Yes.</b></p> <p>11 Q. Why does this press release reference a need to</p> <p>12 ensure only U.S. citizens are participating in</p> <p>13 elections?</p> <p>14 <b>A. Why does it reference that? I don't know. I</b></p> <p>15 <b>mean, the bill does ensure that.</b></p> <p>16 Q. Doesn't it seem that this message about SB 14</p> <p>17 seems a bit in conflict with what you had been</p> <p>18 recommending senators to say about the bill?</p> <p>19 <b>A. Well, Lieutenant Governor is not a senator or</b></p> <p>20 <b>the sponsor. I don't think it conflicts with that</b></p> <p>21 <b>necessarily. I think my e-mail that you referenced</b></p> <p>22 <b>earlier was warning about using certain types of terms.</b></p> <p>23 <b>They're talking about certain subjects that were not a</b></p> <p>24 <b>matter covered by the bill.</b></p> <p>25 Q. So you see no conflict between the message</p>

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<p style="text-align: right;">229</p> <p>1 about Voter ID in Exhibit 175 and the purposes of the 2 bill as you saw them?</p> <p>3 <b>A. I think it's a more narrow interpretation of 4 the bill than -- it doesn't include everything the bill 5 covers, so it's more narrow than I might personally 6 characterize it.</b></p> <p>7 <b>Q. Why was there a need for ensuring that only 8 U.S. citizens vote in Texas elections?</b></p> <p>9 <b>A. I don't know. I don't know why.</b></p> <p>10 <b>Q. Was there any factual basis for non-U.S. 11 citizens participating in elections at the time and they 12 need to be stamped out by the Legislature?</b></p> <p>13 <b>A. Again, I think non-U.S. citizens or non-Texas 14 citizens are a subset of a larger class of ineligible 15 voters who would hopefully be deterred from trying to 16 cast fraudulent votes.</b></p> <p>17 <b>Q. This press release references in particular 18 U.S. citizens and ensuring that only U.S. citizens are 19 participating in elections in Texas, correct?</b></p> <p>20 <b>A. Correct.</b></p> <p>21 <b>Q. Were there any facts, that you're aware of at 22 the time, that non-U.S. citizens were participating in 23 Texas elections?</b></p> <p>24 <b>A. I can't recall specific examples.</b></p> <p>25 <b>Q. And was there a lack of public confidence in</b></p>	<p style="text-align: right;">231</p> <p>1 <b>Q. (By Ms. Westfall) Do you recognize this 2 document?</b></p> <p>3 <b>A. Yes.</b></p> <p>4 <b>Q. What is it?</b></p> <p>5 <b>A. It looks like an e-mail from myself to Senate 6 staffers, some Senate staffers, with an attached summary 7 of SB 14 as it passed the Senate.</b></p> <p>8 <b>MS. WESTFALL: For the record, Exhibit 176 9 is Texas 00034469 through Texas TX 00034471.</b></p> <p>10 <b>Q. (By Ms. Westfall) Did you draft the attachment 11 to Exhibit 176?</b></p> <p>12 <b>A. I think I probably did.</b></p> <p>13 <b>Q. And the attachment is titled Voter ID Bill 14 Summary, correct?</b></p> <p>15 <b>A. Correct.</b></p> <p>16 <b>Q. Who was the intended audience of this bill 17 summary?</b></p> <p>18 <b>A. I assume the people on the e-mail that I sent 19 it to.</b></p> <p>20 <b>Q. Was it solely for purposes of advising these 21 staff people, or was it intended for a broader audience?</b></p> <p>22 <b>A. It's possible it was intended for people on the 23 Lieutenant Governor's staff, as well as the recipients 24 of this e-mail.</b></p> <p>25 <b>Q. Did you circulate this summary to anybody else</b></p>
<p style="text-align: right;">230</p> <p>1 the election process as a result of noncitizens 2 participating in the elections?</p> <p>3 <b>A. Again, I think it was my impression -- it is my 4 impression that voters in Texas, citizens in Texas saw 5 room for improvement, specifically in the form of photo 6 ID, as evidenced by public opinion polls, among all 7 voters, minority voters, and subsets of minority voters.</b></p> <p>8 <b>MS. WESTFALL: I would like to designate 9 this now as highly confidential. 10 (Exhibit 176 marked for identification.)</b></p> <p>11 <b>Q. (By Ms. Westfall) You've been handed what's 12 been marked as 176. Do you recognize this document?</b></p> <p>13 <b>MS. HALPERN: And just before he answers 14 that, and again, I wasn't involved in that process. But 15 to the extent that this document has been marked as 16 highly confidential, I think it's incumbent on me to 17 enter a running objection to questions about this 18 document to the extent that whatever privileges were 19 asserted by the person who wrote this document are 20 obliterated by your asking questions about it.</b></p> <p>21 <b>MS. WESTFALL: I take strong objection to 22 the word "obliterated," Counsel. But your objection is 23 on the record. And this is designated as highly 24 confidential pursuant to the consent protective order 25 ECF 105.</b></p>	<p style="text-align: right;">232</p> <p>1 <b>besides the recipients on the first page of Exhibit 176?</b></p> <p>2 <b>A. I don't recall whether I did or not.</b></p> <p>3 <b>Q. Was this summary reviewed and approved by 4 anyone in your office before it went out?</b></p> <p>5 <b>A. Probably not, but I can't be sure.</b></p> <p>6 <b>Q. Did Lieutenant Governor Dewhurst see this 7 summary?</b></p> <p>8 <b>A. I can't recall. It's possible.</b></p> <p>9 <b>Q. Do you see it was dated January 27th, 2011?</b></p> <p>10 <b>A. The e-mail is dated January 27th, 2011, yes.</b></p> <p>11 <b>Q. Was this e-mail drafted after the Senate had 12 adopted Senate Bill 14?</b></p> <p>13 <b>A. It appears that yes, it was.</b></p> <p>14 <b>Q. Do you see that under the Bill Summary, the 15 first sentence characterizes SB 14 as the strictest 16 photo ID bill in the country?</b></p> <p>17 <b>A. Yes, arguably the strictest photo ID bill.</b></p> <p>18 <b>Q. What was your assessment based on?</b></p> <p>19 <b>A. The comparison of Texas requirements to states 20 that had other photo ID requirements.</b></p> <p>21 <b>Q. What made it -- what particular facets of the 22 bill made it the strictest in the country?</b></p> <p>23 <b>A. I assume it was related to the forms of 24 acceptable ID. It could also have been related to 25 criminal penalties associated with fraudulent election</b></p>



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<p style="text-align: right;">233</p> <p>1 <b>activity.</b></p> <p>2 Q. Anything else?</p> <p>3 <b>A. Without looking at it in my comparison, I'm not</b></p> <p>4 <b>sure offhand.</b></p> <p>5 Q. Do you believe it was the intent of the Texas</p> <p>6 Legislature to enact the strictest photo ID law in the</p> <p>7 country?</p> <p>8 <b>A. I believe it was the intent of the Legislature</b></p> <p>9 <b>to enact a photo ID law that was successful in securing</b></p> <p>10 <b>the integrity of elections. But I'm not sure they -- I</b></p> <p>11 <b>don't think they did it to get ahead of what other</b></p> <p>12 <b>states were doing or not doing.</b></p> <p>13 Q. Do you see that in the first paragraph, you</p> <p>14 predict that it will be upheld under Section 5, Voting</p> <p>15 Rights Act Review?</p> <p>16 <b>A. I do see that.</b></p> <p>17 Q. Why did you in this summary, right after the</p> <p>18 bill was passed by the Senate, opine that it will be</p> <p>19 preclearance, having only days before expressed grave</p> <p>20 doubts about its state under Section 5?</p> <p>21 <b>A. Well, I think there's a different bill, and so</b></p> <p>22 <b>given the addition of additional acceptable photo IDs</b></p> <p>23 <b>and blanket exceptions for certain classes of voters and</b></p> <p>24 <b>other provisions related to availability of</b></p> <p>25 <b>identification -- election identification cards and</b></p>	<p style="text-align: right;">235</p> <p>1 <b>voters.</b></p> <p>2 Q. In terms of what was passed in the Senate, did</p> <p>3 the provision excluding voters over 70, was that</p> <p>4 included in the bill signed into law?</p> <p>5 <b>A. I do not believe it was.</b></p> <p>6 Q. Was the exemption for SB 14, by presenting a</p> <p>7 certificate related to disability, passed into law?</p> <p>8 <b>A. I believe it was.</b></p> <p>9 Q. Are you -- are you -- do you believe that it</p> <p>10 was -- the voter had to obtain documentation from the</p> <p>11 Social Security Administration or Veterans</p> <p>12 Administration in the version that was enacted?</p> <p>13 <b>A. For the disability exception? I cannot</b></p> <p>14 <b>remember the specific documentation required. I'd have</b></p> <p>15 <b>to look it up. I can if you'd like.</b></p> <p>16 Q. Was the Senate -- do you recall, was the Senate</p> <p>17 version -- did the Senate version have a provision where</p> <p>18 a person with a disability could obtain a certificate or</p> <p>19 documentation from a physician to be exempt?</p> <p>20 <b>A. I can't recall that except by looking at this</b></p> <p>21 <b>summary, that I presumably prepared. It says that a</b></p> <p>22 <b>voter who is disabled and has provided a physician</b></p> <p>23 <b>certification of that disability to the registrar may</b></p> <p>24 <b>get a certain type of registration card.</b></p> <p>25 Q. And was that provision part of the bill that</p>
<p style="text-align: right;">234</p> <p>1 <b>education.</b></p> <p>2 Q. Were election identification cards included</p> <p>3 when the Senate passed the bill, or was that in</p> <p>4 conference committee?</p> <p>5 <b>A. A good question. Let me check. It may have</b></p> <p>6 <b>been in conference. I can't remember for sure offhand</b></p> <p>7 <b>without having a copy of the Senate and engrossed</b></p> <p>8 <b>version.</b></p> <p>9 Q. So the basis of your opinion about the bill</p> <p>10 being likely precleared is based on the exemptions for</p> <p>11 disability and what other provision?</p> <p>12 <b>A. Again, the changes made in the Senate after</b></p> <p>13 <b>filing included additional forms of acceptable photo ID,</b></p> <p>14 <b>exceptions for certain classes of people, including</b></p> <p>15 <b>voters over 70, disabled voters, indigent or religious</b></p> <p>16 <b>objectors; the fact that the name and ID must be</b></p> <p>17 <b>substantially similar to the name on the list as opposed</b></p> <p>18 <b>to exactly matching. I can't remember what else.</b></p> <p>19 Q. And were those provisions -- did those</p> <p>20 provisions ensure that there would not be disparate</p> <p>21 impact on minority voters, or was that simply a</p> <p>22 lessening of the burden on all voters?</p> <p>23 <b>A. I think both. Minority voters are included in</b></p> <p>24 <b>all voters, so in lessening the burden on all voters</b></p> <p>25 <b>would almost certainly reduce the burden on minority</b></p>	<p style="text-align: right;">236</p> <p>1 was signed into law?</p> <p>2 <b>A. I can't remember the exact language in the</b></p> <p>3 <b>final bill.</b></p> <p>4 Q. Was something more restrictive related to just</p> <p>5 the Social Security Administration and the Veterans</p> <p>6 Administration signed into law?</p> <p>7 MS. HALPERN: Object to the form.</p> <p>8 <b>A. I mean, it's possible. I can look at the bill.</b></p> <p>9 Q. (By Ms. Westfall) Please.</p> <p>10 <b>A. Yes. There is different language. And my</b></p> <p>11 <b>guess is, it was made to conform with some standardized</b></p> <p>12 <b>language regarding a definition of disability.</b></p> <p>13 Q. It had the effect of being more -- providing a</p> <p>14 narrower class of persons with disabilities relief from</p> <p>15 the bill, did it not?</p> <p>16 <b>A. I can't recall now what the affect was, but I</b></p> <p>17 <b>do recall, now that I have the language in front of me,</b></p> <p>18 <b>that it was designed to make it parallel to existing</b></p> <p>19 <b>definitions of disability elsewhere in Texas law.</b></p> <p>20 Q. Fair to say it's easier to get a note from a</p> <p>21 doctor than it is to get a document from the Social</p> <p>22 Security Administration or Veterans Administration?</p> <p>23 <b>A. I honestly don't know. I mean, the language</b></p> <p>24 <b>here is a physician certification of the disability.</b></p> <p>25 <b>I'm not sure exactly what that entails, and I'm not sure</b></p>

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<p style="text-align: right;">237</p> <p>1 if these documents from the Social Security 2 Administration or Department of Veterans Affairs are 3 obtainable online or by mail or in the possession of 4 people receiving disability benefits anyway. 5 Q. Did you have any knowledge about that process 6 at the time that SB 14 was enacted by -- passed by the 7 Senate? 8 A. I'm not sure that I did. 9 Q. In the summary, you also reference persons who 10 are indigent -- 11 A. Yes. 12 Q. -- being exempt from the bill in certain 13 regards of being able to get a photo ID or not being 14 able to get a photo ID. That provision was not included 15 in the bill signed into law, correct? 16 A. Correct. And I think the answer is because 17 voting, election identification certificates free of 18 charge were added, which removed the need to exempt 19 indigent people up front. 20 Q. Fair to say that the bill that was signed into 21 law was stricter than the version that the Senate 22 passed? 23 A. I'm not sure strict is the right word. I mean, 24 there were -- there is different language. They added 25 some things and removed some things. But without a</p>	<p style="text-align: right;">239</p> <p>1 Q. Do you know why it was taken out? 2 A. I don't. 3 Q. Were you involved in drafting the EIC provision 4 that was adopted during the conference? 5 A. I believe I was. 6 Q. How did you develop will that language? 7 A. I believe my intent was to have it parallel 8 existing statutory or rule language for drivers' 9 licenses, after removing parts that were not relevant. 10 The goal was to have the cards and the information be 11 similar to drivers' licenses and issued by the same 12 agency. 13 MS. WESTFALL: And I meant to suspend the 14 designation of highly confidential right before I 15 started asking about the conference committee. I don't 16 know if it's possible to insert it at this juncture. 17 Q. (By Ms. Westfall) Did you consider the hours of 18 operation for driver license offices when you were 19 developing the EIC provision? 20 A. I mean, generally, the hours of operation of 21 DPS offices were debated on the floor of the Senate, so 22 I think, yes, I would have considered it. 23 Q. Was there any response legislatively to those 24 concerns raised? 25 A. Not within the face of this statute, but I'm</p>
<p style="text-align: right;">238</p> <p>1 side-by-side comparison, I wouldn't say strict. And 2 even if I saw them side by side, I'm not sure strict is 3 the right word. 4 Q. Did the Lieutenant Governor play any role in 5 the conference committee's consideration of Senate Bill 6 14? 7 A. I don't know. 8 Q. Did he appoint the conferee? 9 A. He did do that. 10 Q. Was it just the Senate conferees, or did he 11 also -- was he also involved in the House conferee side 12 of things? 13 A. The Lieutenant Governor appoints Senate 14 conferees to conference committees, so I'm not aware of 15 any other involvement in appointees. 16 Q. Does he appoint conferees for all bills in the 17 Senate or only certain bills? 18 A. Any bill that goes to conference committee has 19 conferees appointed by the Lieutenant Governor. 20 Q. During the conference committee's consideration 21 of SB 14, did the conference committee remove the 22 provision to require that voter education be targeted at 23 low income and minority voters? Are you aware of that? 24 A. I can't remember when that language was added 25 or taken out.</p>	<p style="text-align: right;">240</p> <p>1 not sure what other legislative actions were taken. And 2 again, I know as a fact that actions were taken by the 3 Department of Public Safety. 4 Q. Was it left to DPS, when the bill was being 5 crafted, as to what the hours of the driver license 6 offices would be? 7 A. Yes. DPS sets the hours of their office based 8 on the whole range of factors, including population and 9 usage and so forth. 10 Q. And Senate Bill 14 did not direct or influence 11 in any way where driver licenses offices were located; 12 is that correct? 13 A. I'd have to check to be sure. 14 (Reviewing document.) I don't see any 15 language doing that. 16 Q. Did the Legislature, in crafting SB 14, give 17 any consideration to the availability of driver license 18 offices via public transit? 19 A. Again, my recollection is that it was -- that 20 may have been part of the debate on the floor, but I 21 can't remember any specific language in the face of the 22 statute addressing that. 23 Q. During consideration of SB 14, was there any 24 analysis of cost or steps a voter would need to take to 25 obtain an EIC?</p>

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<p style="text-align: right;">241</p> <p>1 <b>A. I can't recall.</b></p> <p>2 Q. Is it fair to say that Hispanic and African</p> <p>3 American senators asserted during the legislative</p> <p>4 process that Senate Bill 14 would diminish the</p> <p>5 participation of Hispanic and African American voters?</p> <p>6 <b>A. I recall that was, yes.</b></p> <p>7 Q. Do you agree with that assessment?</p> <p>8 <b>A. No, not necessarily.</b></p> <p>9 Q. I should say, did you at the time agree with</p> <p>10 that assessment?</p> <p>11 <b>A. No.</b></p> <p>12 Q. What was your basis, factual basis at the time</p> <p>13 to have skepticism about those assertions?</p> <p>14 <b>A. I would say the entirety of testimony over the</b></p> <p>15 <b>course of multiple sessions; the fact that not just in</b></p> <p>16 <b>Texas, but in no other state, that I was aware of, had</b></p> <p>17 <b>even a single minority or other plaintiff come forward</b></p> <p>18 <b>that was unable to obtain an ID or they already</b></p> <p>19 <b>possessed an ID, and that was true for minority</b></p> <p>20 <b>populations, poor populations, and all populations.</b></p> <p>21 <b>So I would guess -- I would say in part,</b></p> <p>22 <b>based on the experience of other states and the lack of</b></p> <p>23 <b>people -- even a single person identified as unable to</b></p> <p>24 <b>obtain identification. And again, the fact that during</b></p> <p>25 <b>the multiple sessions of testimony, I was not convinced</b></p>	<p style="text-align: right;">243</p> <p>1 discriminatory purpose, in whole or in part?</p> <p>2 <b>A. I do not believe that it was passed with any</b></p> <p>3 <b>discriminatory purpose, in whole or in part.</b></p> <p>4 Q. Was Senate Bill 14 enacted in part to reduce</p> <p>5 the participation of Hispanic voters?</p> <p>6 <b>A. I do not believe so.</b></p> <p>7 Q. Was SB 14 enacted in part to reduce the</p> <p>8 participation of African American voters?</p> <p>9 <b>A. I do not believe so. And, in fact, at least on</b></p> <p>10 <b>the House side, there were minority members, black and</b></p> <p>11 <b>Hispanic, who voted for the bill.</b></p> <p>12 Q. At any time since the passage of Senate Bill</p> <p>13 14, have you come to believe that Senate Bill 14 will</p> <p>14 have a disproportionate effect on minority voters as</p> <p>15 compared to Anglo voters?</p> <p>16 <b>A. I have not seen any evidence to convince me of</b></p> <p>17 <b>that.</b></p> <p>18 <b>Q. Are you familiar with the opinion of Texas</b></p> <p>19 <b>versus Holder denying judicial preclearance of Senate</b></p> <p>20 <b>Bill 14?</b></p> <p>21 <b>A. I am generally familiar.</b></p> <p>22 Q. Did you read the opinion?</p> <p>23 <b>A. It's been a while.</b></p> <p>24 Q. But yeah?</p> <p>25 <b>A. Yes, I have read it.</b></p>
<p style="text-align: right;">242</p> <p>1 <b>that this would adversely impact any one class of people</b></p> <p>2 <b>in Texas.</b></p> <p>3 <b>Q. Do you think that it would be problematic if SB</b></p> <p>4 <b>14 made it more difficult for Hispanic and African</b></p> <p>5 <b>American voters to participate in elections, even if it</b></p> <p>6 <b>didn't wholly disenfranchise them?</b></p> <p>7 <b>MS. HALPERN: Objection, calls for a legal</b></p> <p>8 <b>conclusion.</b></p> <p>9 <b>Q. (By Ms. Westfall) You may answer.</b></p> <p>10 <b>A. Would it be problematic if SB 14 adversely</b></p> <p>11 <b>impacted minority populations?</b></p> <p>12 <b>Q. Made it more burdensome.</b></p> <p>13 <b>A. Made it more burdensome. It would depend on</b></p> <p>14 <b>the extent of that burden. It would be dependant on</b></p> <p>15 <b>whether it was only minorities that were burdened. It</b></p> <p>16 <b>would depend on whether there was an intent to burden</b></p> <p>17 <b>only those minorities. So possibly, just to answer, I</b></p> <p>18 <b>guess.</b></p> <p>19 Q. At any time since the passage of Senate Bill</p> <p>20 14, have you come to believe that Senate Bill 14 was</p> <p>21 passed with any discriminatory purpose?</p> <p>22 <b>A. Before I say yes or no, how was it phrased</b></p> <p>23 <b>again? Do I believe that it was passed --</b></p> <p>24 Q. At any time since the passage of Senate Bill</p> <p>25 14, have you come to believe that it was passed with any</p>	<p style="text-align: right;">244</p> <p>1 Q. Did the Lieutenant Governor have a reaction to</p> <p>2 the decision?</p> <p>3 <b>A. My memory is that he was disappointed.</b></p> <p>4 Q. How did the Senate on the whole react?</p> <p>5 MS. HALPERN: Objection, calls for</p> <p>6 speculation.</p> <p>7 Q. (By Ms. Westfall) You may answer.</p> <p>8 <b>A. Public reactions from individual to senators</b></p> <p>9 <b>varied.</b></p> <p>10 Q. How did -- go ahead.</p> <p>11 <b>A. Some were disappointed and some were pleased, I</b></p> <p>12 <b>imagine.</b></p> <p>13 <b>Q. Did the Lieutenant Governor take any actions to</b></p> <p>14 <b>respond to the decision?</b></p> <p>15 <b>A. I can't remember any specific action.</b></p> <p>16 Q. Did he propose any changes to Senate Bill 14?</p> <p>17 <b>A. I can't recall.</b></p> <p>18 Q. Did he or any senator urge that amendments to</p> <p>19 Senate Bill 14 be made to address any of the concerns</p> <p>20 raised by the court?</p> <p>21 <b>A. I can't recall specific suggestions.</b></p> <p>22 Q. How many times did the Legislature meet after</p> <p>23 -- strike that.</p> <p>24 <b>When did the decision -- when was it</b></p> <p>25 <b>issued?</b></p>

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<p style="text-align: right;">245</p> <p>1 A. I can't recall a date.</p> <p>2 Q. Is it -- was it issued around August 2012?</p> <p>3 A. That sounds right.</p> <p>4 Q. How many times did the Legislature meet after</p> <p>5 August 2012?</p> <p>6 A. They would have met in regular session in the</p> <p>7 spring of -- winter and spring of 2013, and one or two</p> <p>8 special sessions after that.</p> <p>9 Q. Are you aware of any committee hearings held</p> <p>10 related to Voter ID after Texas versus Holder was</p> <p>11 issued?</p> <p>12 A. It's possible that the issue was addressed</p> <p>13 during the regular legislative session, but I also know</p> <p>14 that courts -- the U.S. Supreme Court's decision</p> <p>15 regarding Section 5 of the Voting Rights Act impacted</p> <p>16 concern over preclearance.</p> <p>17 Q. Do you know when that decision was issued?</p> <p>18 A. It was the summer. I forget the date.</p> <p>19 Q. Was it issued June 25th, 2013?</p> <p>20 A. That sounds -- that sounds right.</p> <p>21 Q. And so for the period from the time that Texas</p> <p>22 versus Holder was issued in August 2012 to June 25th,</p> <p>23 2013, were there any committee hearings held related to</p> <p>24 Voter ID in the Texas Legislature?</p> <p>25 A. I'm not sure on the House side, and I can't</p>	<p style="text-align: right;">247</p> <p>1 Q. Between August -- August 2012 and June 2013?</p> <p>2 A. Well, they wouldn't have been called right</p> <p>3 before the regular session because there wasn't time.</p> <p>4 And then during the regular session, as I said, I don't</p> <p>5 recall what specific action or consideration committees</p> <p>6 gave to it. And then session ended late May, early</p> <p>7 June, and the Shelby County decision came out late June.</p> <p>8 So I think no, there was not consideration given through</p> <p>9 the legislative process.</p> <p>10 Q. And after the decision in Texas versus Holder,</p> <p>11 Texas held a major election, did it not?</p> <p>12 A. I think that's right.</p> <p>13 Q. A presidential federal election in November</p> <p>14 2012; is that right?</p> <p>15 A. Right.</p> <p>16 Q. Were there any efforts made on the part of the</p> <p>17 Legislature to hold hearings, convene task force or</p> <p>18 otherwise examine the administration of the 2012</p> <p>19 election?</p> <p>20 A. I'm not sure.</p> <p>21 Q. Would you be aware of those had they been?</p> <p>22 A. I might be aware of them, but be unable to</p> <p>23 remember them now. But I don't remember any specific</p> <p>24 efforts by the Legislature to examine the effects.</p> <p>25 I know there were various news accounts by</p>
<p style="text-align: right;">246</p> <p>1 recall on the Senate side. But again, I think there was</p> <p>2 -- I, as an observer, expected a decision soon regarding</p> <p>3 the constitutionality of Section 5 of the Voting Rights</p> <p>4 Act, given the animosity that arose out of Senate Bill</p> <p>5 14 and the earlier versions of that; the extreme</p> <p>6 partisan split on the issue that I don't think anybody</p> <p>7 was in a hurry to get right back into it when there were</p> <p>8 pending U.S. Supreme Court cases on the issue.</p> <p>9 Q. Were any pending -- the Shelby County case,</p> <p>10 that's the case you're referring to?</p> <p>11 A. Correct.</p> <p>12 Q. And that did not -- that was not an appeal of</p> <p>13 the Texas Voter ID decision, correct?</p> <p>14 A. Correct.</p> <p>15 Q. That was about the constitutionality of the</p> <p>16 formula of coverage under Section IV of the Voting</p> <p>17 Rights Act?</p> <p>18 A. Correct.</p> <p>19 Q. As well as Section 5 of the Voting Rights Act,</p> <p>20 correct?</p> <p>21 A. By reference, yes.</p> <p>22 Q. Were any interim session committees convened</p> <p>23 during this period to address the issue of Voter ID that</p> <p>24 you're aware of?</p> <p>25 A. Between the period -- the end of session and --</p>	<p style="text-align: right;">248</p> <p>1 the media. There were comments from county election</p> <p>2 official in those media reports. I know the Secretary</p> <p>3 of State's Office was reviewing the implementation of</p> <p>4 the program.</p> <p>5 Q. I just want to make sure we're testifying --</p> <p>6 you're testifying about the election I'm referring to.</p> <p>7 The election during November 2012, SB 14</p> <p>8 was not in effect, correct?</p> <p>9 A. Correct.</p> <p>10 Q. Was there any examination of how that election</p> <p>11 went by the Legislature?</p> <p>12 A. I'm not clear.</p> <p>13 Q. You don't know?</p> <p>14 A. I don't know.</p> <p>15 Q. And you would be the person who would likely</p> <p>16 know for the Lieutenant Governor, would you not, because</p> <p>17 you handle election issues?</p> <p>18 A. Actually, in November 2012, I had just returned</p> <p>19 to the Lieutenant Governor's Office, and I was not</p> <p>20 handling elections of the broad issue when I returned.</p> <p>21 Q. Who was?</p> <p>22 A. Constance Allison.</p> <p>23 Q. Are you aware of any in person voter</p> <p>24 impersonation that occurred in the state of Texas during</p> <p>25 the 2012 presidential election?</p>

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<p style="text-align: right;">249</p> <p>1 A. I am not personally aware of any.</p> <p>2 Q. Who would be the best person in the state of</p> <p>3 Texas to answer that question?</p> <p>4 A. Individual county law enforcement officials.</p> <p>5 Q. Who would be the best person at the state level</p> <p>6 to answer that question?</p> <p>7 A. I suppose the Secretary of State, possibly the</p> <p>8 Attorney General. But those would only come to the</p> <p>9 Attorney General if they forwarded by local law</p> <p>10 enforcement.</p> <p>11 Q. Are you aware of any in person voter</p> <p>12 impersonation that occurred in Texas during any election</p> <p>13 between August 2012 and June 2013?</p> <p>14 A. I cannot recall being aware of any.</p> <p>15 Q. As of June 26th, 2013, Texas started to enforce</p> <p>16 Senate Bill 14, correct?</p> <p>17 A. On what date? I'm sorry.</p> <p>18 Q. June 26th, 2013, it started to enforce the law?</p> <p>19 A. I think that's correct.</p> <p>20 Q. After Shelby was issued; is that right?</p> <p>21 A. That's correct.</p> <p>22 Q. Have you or anyone in the Lieutenant Governor's</p> <p>23 Office played any role the implementation of Senate Bill</p> <p>24 14 since June 26th, 2013?</p> <p>25 A. I don't think I can say we played a role in the</p>	<p style="text-align: right;">251</p> <p>1 believe, other election officials saying there has not</p> <p>2 be noticeable problems, and I can't remember if senators</p> <p>3 may have been quoted in any of those individuals'</p> <p>4 accounts.</p> <p>5 Q. Has the Lieutenant Governor or the Legislature</p> <p>6 made any efforts to determine the number of voters who</p> <p>7 have appeared to vote in person without a qualifying</p> <p>8 photo ID?</p> <p>9 A. I'm not sure there has been a legislative</p> <p>10 effort to do that.</p> <p>11 Q. So the answer is no?</p> <p>12 A. As far as I'm aware, the answer is no.</p> <p>13 Q. Has the Lieutenant Governor or the Legislature</p> <p>14 made any effort to determine the number of provisional</p> <p>15 ballots cast for lack of qualifying photo ID that were</p> <p>16 not counted?</p> <p>17 A. I am not sure.</p> <p>18 MS. WESTFALL: I want to take a slight</p> <p>19 break, and then we're nearing the end for me.</p> <p>20 (Recess taken from 4:45 p.m. to 4:57 p.m.)</p> <p>21 (Exhibit 177 marked for identification.)</p> <p>22 Q. (By Ms. Westfall) I'm going to hand you what's</p> <p>23 been marked as 177, and this is highly confidential</p> <p>24 another highly confidential document.</p> <p>25 MS. HALPERN: We're going back to that</p>
<p style="text-align: right;">250</p> <p>1 implementation.</p> <p>2 Q. Have you had communications with DPS other than</p> <p>3 the communications you testified about earlier this</p> <p>4 morning?</p> <p>5 A. I don't believe I have.</p> <p>6 Q. Has the Lieutenant Governor attempted to assess</p> <p>7 the impact of Senate Bill 14 on minority voters since</p> <p>8 Texas began enforcing Senate Bill 14?</p> <p>9 MS. HALPERN: I want to remind the witness</p> <p>10 that he is the general counsel for the Lieutenant</p> <p>11 Governor, and in that capacity, not to reveal any</p> <p>12 attorney-client confidences.</p> <p>13 A. I am not sure what efforts he has and has not</p> <p>14 undertaken.</p> <p>15 Q. (By Ms. Westfall) Has the Lieutenant Governor</p> <p>16 requested that the Secretary of State Office assess the</p> <p>17 impact of Senate Bill 14 on minority voters?</p> <p>18 A. I'm not aware that he has.</p> <p>19 Q. Has any legislator who supported Senate Bill</p> <p>20 14, to your knowledge, made any effort to assess the</p> <p>21 impact of Senate Bill 14 on minority voters?</p> <p>22 A. It's possible. Again, on my behalf, I have</p> <p>23 reviewed news accounts following each of the recent</p> <p>24 elections, statements from Travis County officials,</p> <p>25 election officials and other -- Harris County, I</p>	<p style="text-align: right;">252</p> <p>1 mode. 177.</p> <p>2 Q. (By Ms. Westfall) Do you recognize this</p> <p>3 document? Take your time to look at it.</p> <p>4 MS. WESTFALL: It is, for the record,</p> <p>5 LEG00004939 through 4941.</p> <p>6 A. It looks like e-mails between myself and</p> <p>7 representatives from a group called True the Vote.</p> <p>8 Q. (By Ms. Westfall) When did these exchanges</p> <p>9 occur?</p> <p>10 A. The first e-mail is August 30, and the last one</p> <p>11 is September 16, 2013.</p> <p>12 Q. Were the representatives from True the Vote</p> <p>13 asking for your assistance?</p> <p>14 A. Yes.</p> <p>15 Q. What were they seeking from you?</p> <p>16 A. They were wanting updates on efforts to</p> <p>17 implement voter -- voter -- getting identification to</p> <p>18 voters and related matters, voter registration election</p> <p>19 integrity issues.</p> <p>20 Q. Did this relate to EICs?</p> <p>21 A. I'm not sure that it related specifically to</p> <p>22 EICs. I think it was more identification in general,</p> <p>23 but certainly, EIC would have been included in that. I</p> <p>24 can review to be sure.</p> <p>25 Q. Sure. Why don't you take a moment to look and</p>



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<p style="text-align: right;">257</p> <p>1 MR. DUNBAR: Thank you, Ms. Westfall. 2 EXAMINATION 3 BY MR. DUNBAR: 4 Q. Good afternoon, Mr. Hebert. I'm Kelly Dunbar. 5 As I mentioned before, I represent the Texas League of 6 Young Voters' Education Fund and Imania Clark as an 7 individual. 8 THE REPORTER: I'm sorry, why don't you 9 move down here. 10 MR. DUNBAR: Sure. 11 (Changing seats.) 12 MS. HALPERN: Just for clarification, I am 13 representing this witness and I'm not otherwise part of 14 this lawsuit. Who is your client? 15 MR. DUNBAR: The Texas League of Young 16 Voters' Education Fund. 17 MS. HALPERN: What is that? 18 MR. DUNBAR: It's a public interest 19 organization in Texas. They're getting deposed tomorrow 20 by the State, so. 21 MS. HALPERN: You represent voters like 22 under 22 or something? 23 MR. DUNBAR: It's focused on registering 24 and issues relating to young voters in the state. 25 MS. HALPERN: Thanks. I appreciate that.</p>	<p style="text-align: right;">259</p> <p>1 Q. Sure. That's the March 4th, 2009 e-mail from 2 you to Janice McCoy. 3 A. Okay. 4 Q. And then you found 176? 5 A. I did. 6 Q. Okay. And Ms. Westfall asked you some 7 questions about these, so I guess I want to start with 8 exhibit -- Exhibit 176. And if you turn to -- 9 MR. WHITLEY: I'm sorry. That's one of 10 the ones I didn't get. Do you have an extra copy for 11 me? 12 MS. WESTFALL: Which one is that? 13 MR. WHITLEY: 155. 14 THE WITNESS: The summary of SB 14. 15 MR. DUNBAR: I'm on 176 right now, which I 16 do not have an extra copy of. 17 MR. WHITLEY: I've got 176. I don't have 18 155. 19 MR. DUNBAR: Oh, I'm sorry, 155. 20 MS. HALPERN: What is 155? 21 MR. DUNBAR: That's the Mr. Hebert e-mail 22 to Janice McCoy in March of 2009. 23 MS. HALPERN: Oh, yeah. Let me just see 24 if I can find that for you. 25 (Brief discussion off the record.)</p>
<p style="text-align: right;">258</p> <p>1 MR. DUNBAR: And one individual who is a 2 student. 3 MS. HALPERN: Okay. 4 Q. (By Mr. Dunbar) Mr. Hebert, good afternoon. I 5 think my introduction is on the record. Just to be 6 clear, I assume we will continue the deposition under 7 kind of the same ground rules and understanding that 8 Ms. Westfall provided you now early this morning. Is 9 that acceptable to you? 10 A. Yes. 11 Q. Great. And I think I'll just start. I had a 12 few questions about some of the highly confidential 13 e-mails, so would ask that this part be designated as 14 highly confidential and that I'm hopeful we can move off 15 that and not need to worry about that with respect to 16 the rest of my questions. 17 MR. WHITLEY: Mr. Dunbar, sorry to 18 interrupt. Just to be clear, even though you're asking 19 the questions now, the defendants will assert the same 20 objections as to the highly confidential portions that 21 we did while Ms. Westfall was asking the questions. 22 MR. DUNBAR: Understood. Thank you. 23 Q. (By Mr. Dunbar) And I'd ask that you gather 24 Exhibit 176 and Exhibit 155. 25 A. Can you tell me what 155 is?</p>	<p style="text-align: right;">260</p> <p>1 Q. (By Mr. Dunbar) Okay. And just to be clear, 2 so the record is clear on this point, this is an e-mail 3 and attachment from you on January 7, 2011, to a group 4 of Senate staffers; is that correct? 5 A. January 27. 6 Q. Yeah, you're correct. Thank you for the 7 clarification. 8 A. Uh-huh. 9 Q. And on the first page after the cover e-mail, I 10 believe you answered this question for Ms. Westfall 11 already. You explained that SB 14 would give Texas 12 arguably the strictest voter ID law in the country; is 13 that correct? 14 A. That's what this says, yes. 15 Q. And is it fair to describe this attachment as 16 advocating for the strictest photo ID law in the 17 country? 18 A. I don't think it's advocating for the strictest 19 photo ID law in the country. I think it's 20 characterizing it as arguably so, but then the next 21 sentence says, also, that I thought it was going to be 22 upheld under the constitution and Section 5 of the 23 Voting Rights Act. 24 Q. Right. So is it fair to say by January 27, 25 2011, it was the position of you or your office that</p>

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<p style="text-align: right;">261</p> <p>1 SB 14 should be adopted as it was -- as it was written?</p> <p>2 A. Yes. The Senate likes no changes from the</p> <p>3 House as a general rule.</p> <p>4 Q. But I'm asking about the position of you as a</p> <p>5 representative of the office of the Lieutenant Governor</p> <p>6 who were advocating enacting the bill as written; is</p> <p>7 that correct?</p> <p>8 A. I think that's fair.</p> <p>9 Q. And again, that would be the strictest photo ID</p> <p>10 law in the country, correct?</p> <p>11 A. The bill as passed by the Senate at the time</p> <p>12 was arguably the strictest photo ID law in the country,</p> <p>13 yes.</p> <p>14 Q. Okay. No, that's helpful. I then wanted to</p> <p>15 turn to Exhibit 155, which is, again, a document that</p> <p>16 we've talked about in the record. This is an e-mail</p> <p>17 from you on March 4, 2009 to Janice McCoy; is that</p> <p>18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. And on page 1 of this document, which I --</p> <p>21 again, we've already discussed, you have, "Reasons to</p> <p>22 Support SB 362 as Filed," is that correct?</p> <p>23 A. Correct.</p> <p>24 Q. And would you read into the record, if you</p> <p>25 haven't already, what the first bullet is in support</p>	<p style="text-align: right;">263</p> <p>1 supported it.</p> <p>2 MS. HALPERN: And let the record reflect</p> <p>3 that when he says in 2009, this was the bill before the</p> <p>4 Legislature, the witness is referring to Exhibit 155.</p> <p>5 And when he says in 2011, this was the bill before the</p> <p>6 Legislature, the witness is referring to Exhibit 176.</p> <p>7 A. And for both of those, when I say the</p> <p>8 Lieutenant Governor supported it, that's based on his</p> <p>9 public statements.</p> <p>10 Q. (By Mr. Dunbar) So would it be fair to say</p> <p>11 there was no change in the position of your office from</p> <p>12 2009 to 2011 with respect to how strict a photo ID law</p> <p>13 should be?</p> <p>14 A. I can't speak for the Lieutenant Governor</p> <p>15 personally, but I can say on my own behalf, there was</p> <p>16 support for a voter ID bill that improved the security</p> <p>17 of elections in Texas. And both bills did that to</p> <p>18 varying extents. And again, what was before the</p> <p>19 Legislature in 2009 was supported by my office.</p> <p>20 Q. So were there any facts that changed from 2009</p> <p>21 to 2011 that in your offices, your view or your office's</p> <p>22 view, justified a stricter photo ID measure than had</p> <p>23 been discussed in 2009?</p> <p>24 A. I'm not aware of facts that drove changes</p> <p>25 between the bills, but again, I was not -- the</p>
<p style="text-align: right;">262</p> <p>1 that you've written?</p> <p>2 A. The first bullet reads, "This bill improves</p> <p>3 security in the election process but is not as</p> <p>4 restrictive as Indiana and Georgia. There's less chance</p> <p>5 of disenfranchising elderly, poor or minority voters.</p> <p>6 Q. And I believe the record already reflects in</p> <p>7 answer to this question, apologies if I'm wrong, but you</p> <p>8 drafted these sets of bullets; is that correct?</p> <p>9 A. I think I did.</p> <p>10 Q. And so I guess my question is: What facts</p> <p>11 changed from May -- or excuse me, March 2009 to January</p> <p>12 2011 that led your office from advocating a least</p> <p>13 restrictive version of the law to what you then</p> <p>14 characterize as one of the most restrictive photo ID</p> <p>15 laws in the country?</p> <p>16 MS. HALPERN: Objection, compound.</p> <p>17 Q. (By Mr. Dunbar) You can answer.</p> <p>18 A. I think the question, as I understand it, the</p> <p>19 answer is these are different types of documents. One</p> <p>20 is talking points and essentially a sales pitch for</p> <p>21 members to use to get support for the bill. The other</p> <p>22 is a summary of what is in the bill. In 2009, this was</p> <p>23 the bill before the Legislature, and so I believe the</p> <p>24 Lieutenant Governor supported it. In 2011, this was the</p> <p>25 bill before the Legislature, and the Lieutenant Governor</p>	<p style="text-align: right;">264</p> <p>1 Lieutenant Governor was not a sponsor of either bill.</p> <p>2 Q. Right. And you've testified to that point</p> <p>3 before, and I guess I just want to be clear on that.</p> <p>4 That when you say he wasn't the sponsor, you mean in a</p> <p>5 formal parliamentary sense, the Lieutenant Governor was</p> <p>6 not the sponsor of the bill; is that correct?</p> <p>7 A. Correct. The Lieutenant Governor cannot file</p> <p>8 bills.</p> <p>9 Q. But did the Lieutenant Governor, I believe</p> <p>10 you've stated, based on public statements, strongly</p> <p>11 supported voter ID measures; is that correct?</p> <p>12 A. That is correct.</p> <p>13 Q. And that you and your office played a role in</p> <p>14 drafting and implementing various iterations of the bill</p> <p>15 between 2009 and 2011, correct?</p> <p>16 A. I wouldn't use the word implemented, but yes,</p> <p>17 we were consulted in the process.</p> <p>18 Q. And you're not aware of any facts that change</p> <p>19 from 2009 to 2011 that would have justified a stricter</p> <p>20 form of a photo ID law? Is that your testimony?</p> <p>21 MS. HALPERN: Objection, compound, calls</p> <p>22 for -- misstates prior testimony.</p> <p>23 Q. (By Ms. Westfall) You can answer.</p> <p>24 A. I cannot recall specific factual evidence</p> <p>25 between 2009 and 2011 as evidenced through testimony or</p>

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<p style="text-align: right;">265</p> <p>1 other methods that I was aware of, but it is possible 2 there were additional examples of fraud that I'm 3 forgetting. It's possible that there was additional 4 input from experiences of other states. Beyond those 5 things, I'm not sure. 6 Q. But sitting here today, you can't recall any 7 specific instances of additional fraud or examples from 8 other states; is that correct? 9 A. I can't recall right now. 10 Q. And I'd ask that you take a look at Exhibit 11 166, which again is also highly confidential. And then 12 after we're done talking about this, we can probably 13 conclude the highly confidential portion. This is the 14 January 24, 2011 e-mail chain involving Jonathan 15 Stinson, Wroe Jackson. 16 A. Yes. 17 Q. And if you turn to page -- I guess to Texas 18 00265541, the second bullet down, do you see the 19 question: "Why is this bill different from the bill you 20 filed last session?" 21 A. Yes. 22 Q. And can you read -- can you read into the 23 record what your answer is? 24 A. The question is: "Why is this bill different 25 from the bill you filed last session?"</p>	<p style="text-align: right;">267</p> <p>1 Q. Okay. And there's a second part of that 2 sentence then says that there have been two additional 3 years to see that voter fraud is still a problem, 4 correct? 5 A. Correct. 6 Q. And but again, I believe that you've just 7 testified that you can't recall any specific examples of 8 voter fraud between 2009 and 2011 that would justify a 9 stricter voter ID law, correct? 10 A. I cannot recall specific examples. I know as 11 part of my duties, tracking election legislation, in 12 general, there were constant examples in the news that 13 almost every election of some sort of fraud or another. 14 Q. And in general, when you consider these 15 instances of fraud, did you draw distinctions between 16 the types of fraud that were at issue? 17 A. As a legal matter or as a professional matter? 18 Q. As a policy matter, was it relevant to you 19 whether the actual fraud that you perceived to be a 20 problem was in-person voter fraud, the type of fraud 21 that would be addressed by SB 14? 22 A. In assessing whether fraud, in general, was a 23 problem, I didn't make distinctions. In addressing 24 potential legislation in the future to address those 25 problems, I probably did.</p>
<p style="text-align: right;">266</p> <p>1 And the -- I think is a proposed response 2 is: "We have had two additional years to see photo ID 3 working in other states and two additional years to see 4 that voter fraud is still a problem. Only a true photo 5 ID bill can deter and detect fraud at the polls and can 6 protect the public's confidence in elections. Plus, I 7 believe that photo ID is simpler and less confusing for 8 the voters." 9 Q. And I believe your prior testimony is that you 10 did not write that response; is that correct? 11 A. That's correct. 12 Q. Would you agree with that response? 13 A. Seems like a fair response. 14 Q. And again, the response references two 15 additional years to see photo ID working in other 16 states. What did you understand that to mean at the 17 time when you saw these bullets? 18 A. I can't recall what I thought at the time. 19 Looking at it now, I -- it seems evident on its face 20 that states that had voter ID had not experienced 21 problems, and in fact, had seen increases in voter 22 turnout. 23 Q. So you would interpret working in that sentence 24 to mean an actual increase in voter turnout? 25 A. That could be one interpretation of working.</p>	<p style="text-align: right;">268</p> <p>1 Q. So as long as there was, quote/unquote, 2 evidence of voter fraud, you saw that as a rationale for 3 SB 14 across the board, correct? 4 A. I -- yeah, I do. 5 Q. Okay. I think that concludes the highly 6 confidential portion unless something else comes up. 7 SB 14 does include student IDs as an 8 acceptable form of ID; is that correct? 9 A. Correct. 10 Q. And prior to SB 14, I believe we've already 11 talked about student IDs would have been an acceptable 12 form of ID; is that correct? 13 A. In earlier sessions, in some drafts, student 14 IDs were included, yes. 15 Q. Sorry. And my question -- my question, I don't 16 think was clear. I meant prior to SB -- SB 14 going 17 into effect, setting aside prior versions of voter ID 18 legislation, a student voter in Texas could use a 19 student ID to vote; is that correct? 20 A. I'm actually not sure if that's correct. 21 Meaning, in 2009, if a student showed up and their only 22 identification was a student ID, could they vote? 23 Q. Right. 24 A. I'm not sure that's true. 25 Q. Let me take a look, then, I may be misreading</p>

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<p style="text-align: right;">269</p> <p>1 things, so you can help me out here. This would be 2 Exhibit 150, which is not highly confidential. 3 MR. WHITLEY: What is that? 4 MS. HALPERN: 362. 5 MR. DUNBAR: Yeah, this is 362, right, 6 which has the strike-through of what I took to be 7 existing law. So let me clarify that if I'm wrong. 8 <b>A. Got it.</b> 9 Q. (By Mr. Dunbar) Found it. If you look at page 10 6 of the document, or I guess, for the record, can you 11 tell me what Exhibit 150 is? 12 <b>A. Exhibit 150 is a draft of Senate Bill 362 at</b> 13 <b>some point in the process.</b> 14 Q. And you see throughout the draft underlining 15 and strike-throughs, correct? 16 <b>A. Correct.</b> 17 Q. And is it correct to say that underlining 18 represents the additional statutory text? 19 <b>A. The underlined is the proposed new text, and</b> 20 <b>the struck-through is the existing law.</b> 21 Q. Okay. Then on page 6 of the bill, under the 22 first heading at the top, you see strike-through? 23 <b>A. Uh-huh.</b> 24 Q. Beginning with form of identification 25 containing -- that states, "Form of identification</p>	<p style="text-align: right;">271</p> <p>1 <b>A. I don't recall. I mean, again, there was an</b> 2 <b>ongoing discussion amongst senators about what forms of</b> 3 <b>identification are actually reliable, and in the context</b> 4 <b>of that conversation, I believe it was removed.</b> 5 Q. You don't recall who first suggested that 6 students IDs not be an accepted form of voter 7 identification? 8 <b>A. I don't recall.</b> 9 Q. As you recall here today, it was not your 10 office that proposed the idea? 11 <b>A. Correct.</b> 12 Q. So it was likely proposed by someone in the 13 Legislature? 14 <b>A. Yes.</b> 15 <b>Q. And did your office have an official position</b> 16 <b>on the question of whether student IDs should or should</b> 17 <b>not be included as an acceptable form of ID?</b> 18 <b>A. I know I was -- I don't think we had an</b> 19 <b>official position. I have and had concerns about</b> 20 <b>whether or not student IDs are secure forms of</b> 21 <b>identification given the problems I've discussed: The</b> 22 <b>lack of expiration dates, the varying degrees of</b> 23 <b>security, the different types of institutions and</b> 24 <b>locations of institutions and technological capability</b> 25 <b>of institutions and et cetera.</b></p>
<p style="text-align: right;">270</p> <p>1 containing the person's photograph that establishes the 2 person's identity," correct? 3 <b>A. Correct.</b> 4 Q. And to the extent that a student ID had a 5 photograph on it, would that have satisfied the existing 6 law there allowing someone to use a student ID to vote? 7 <b>A. I suppose it could have. I'm not sure how</b> 8 <b>that's interpreted by election officials.</b> 9 Q. Okay. So it's your testimony that in 10 considering SB 14 and whether to include student IDs or 11 not, you were not aware of whether student IDs could 12 actually historically have been used to vote? 13 <b>A. I can't recall if I was aware of it at the</b> 14 <b>time, but, so I'm not sure.</b> 15 Q. Okay. And I believe you -- you answered my 16 first question which may have been unclear, which is the 17 second question I wanted to ask. The prior versions of 18 draft or proposed photo ID legislation that were 19 considered in this relevant time frame did include 20 student IDs as an acceptable form of ID; is that 21 correct? 22 <b>A. That's correct.</b> 23 Q. And do you recall when the decision was made to 24 drop student IDs as a form of acceptable ID from the 25 bill, from the draft bill?</p>	<p style="text-align: right;">272</p> <p>1 Q. And did you discuss -- did you have discussions 2 with legislative staff about whether to include student 3 IDs? 4 <b>A. It's possible. I can't recall specific</b> 5 <b>conversations.</b> 6 Q. Would you have talked to Janice McCoy about the 7 issue? 8 <b>A. Probably.</b> 9 Q. Would you have talked to -- would there be 10 others that you likely would have talked to about the 11 subject? 12 <b>A. I think possibly anyone in these e-mails we've</b> 13 <b>covered today. Senator -- staffers from Senator</b> 14 <b>Williams, Senator Duncan, Senator Huffman, senators who</b> 15 <b>were actively involved in supporting the legislation, as</b> 16 <b>well as, potentially, again, as I mentioned, I had</b> 17 <b>interacted with senators and their staffs daily from</b> 18 <b>both parties, so it's possible I talked to others about</b> 19 <b>it.</b> 20 Q. And would there be one particular legislative 21 office that you would say was the strongest proponent of 22 not including student IDs as a form of acceptable ID? 23 <b>A. I don't recall anyone being particularly</b> 24 <b>outspoken.</b> 25 Q. So there was no one that was really that</p>

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<p style="text-align: right;">273</p> <p>1 supportive of the idea?</p> <p>2 <b>A. Supportive of the idea of removing --</b></p> <p>3 Q. Right.</p> <p>4 <b>A. -- student IDs? No one senator or person</b></p> <p>5 <b>stands out to me.</b></p> <p>6 Q. Okay. And I think you've gotten -- you got</p> <p>7 into this slightly before in answering a different</p> <p>8 question, but what was the purpose of excluding student</p> <p>9 IDs or the purposes of excluding students IDs as a form</p> <p>10 of acceptable identification?</p> <p>11 <b>A. I don't know --</b></p> <p>12 MS. HALPERN: Objection, asked and</p> <p>13 answered.</p> <p>14 Q. (By Mr. Dunbar) I hadn't asked the question</p> <p>15 before so you can answer.</p> <p>16 <b>A. I don't know the author's intent, because I'm</b></p> <p>17 <b>not the author. As I've said, my understanding is and</b></p> <p>18 <b>my -- my position is that those forms of ID are</b></p> <p>19 <b>inherently less secure and less reliable.</b></p> <p>20 Q. And at the time that SB 14 was being</p> <p>21 considered, were you aware of any facts or evidence that</p> <p>22 suggested student IDs had been used for voting fraud in</p> <p>23 Texas?</p> <p>24 <b>A. Not that I recall.</b></p> <p>25 Q. Were you aware of any evidence that student IDs</p>	<p style="text-align: right;">275</p> <p>1 <b>A. Opponents of the bill were concerned that it</b></p> <p>2 <b>would make it harder for students to vote and proponents</b></p> <p>3 <b>disagreed.</b></p> <p>4 Q. And was there any analysis done by proponents</p> <p>5 on the question of whether those assertions were</p> <p>6 correct?</p> <p>7 <b>A. I am not aware.</b></p> <p>8 Q. Was there any discussion about the effect of</p> <p>9 excluding student IDs on voting at historically Black</p> <p>10 colleges or universities in the state?</p> <p>11 <b>A. Was there any analysis?</b></p> <p>12 Q. Correct.</p> <p>13 <b>A. I'm not aware.</b></p> <p>14 Q. So there was no assessment on the impact of</p> <p>15 excluding student IDs on minority voters?</p> <p>16 <b>A. I'm not aware of any analysis.</b></p> <p>17 Q. I believe you mentioned earlier the possibility</p> <p>18 of student IDs being forged because they're less secure.</p> <p>19 Was there any comparison done of the ability or the ease</p> <p>20 of forging student IDs versus other forms of accepted</p> <p>21 identification?</p> <p>22 <b>A. I don't recall of specific studies, but I have</b></p> <p>23 <b>some memory of floor debate or maybe even student IDs</b></p> <p>24 <b>were held up as an example to show that, for example,</b></p> <p>25 <b>there was no expiration date on them, that they didn't</b></p>
<p style="text-align: right;">274</p> <p>1 had been used for voting fraud anywhere in the country?</p> <p>2 <b>A. Not that I recall.</b></p> <p>3 Q. Was any analysis done of how many people used</p> <p>4 students IDs historically in elections to vote?</p> <p>5 <b>A. Not that I recall. I know there was debate</b></p> <p>6 <b>about the use of student IDs, and I can't remember if</b></p> <p>7 <b>there was an analysis of what percentage of voters used</b></p> <p>8 <b>those IDs. I know the document that was presented to me</b></p> <p>9 <b>earlier estimated that something along the lines of 95</b></p> <p>10 <b>percent of voters possessed a driver's license, but I</b></p> <p>11 <b>don't know if there was similar analysis for student</b></p> <p>12 <b>IDs.</b></p> <p>13 Q. So you're sitting here today, you're aware of</p> <p>14 no analysis that was done on the question of the number</p> <p>15 of -- the number of voters that had historically used --</p> <p>16 excuse me, that had historically used students IDs to</p> <p>17 vote, correct?</p> <p>18 <b>A. Correct.</b></p> <p>19 Q. And was there any discussion about the effect</p> <p>20 of excluding student IDs on voter -- on student voter</p> <p>21 turnout generally?</p> <p>22 <b>A. Yes. There was debate on the floor about that</b></p> <p>23 <b>issue, I recall.</b></p> <p>24 Q. And what was the nature of that debate on the</p> <p>25 floor?</p>	<p style="text-align: right;">276</p> <p>1 have, you know, backing bar codes or things that might</p> <p>2 indicate it was a formal identification. But I can't</p> <p>3 remember, specifically, studies that might have been</p> <p>4 done.</p> <p>5 Q. And did your office consider alternatives to</p> <p>6 banning the use of student IDs to address some of the</p> <p>7 problems that you've identified with their potential</p> <p>8 use?</p> <p>9 <b>A. My memory is at different stages of the -- of</b></p> <p>10 <b>similar legislation over multiple sessions, did have</b></p> <p>11 <b>different forms of student ID. I think one was all</b></p> <p>12 <b>student IDs. One was only government-issued student IDs</b></p> <p>13 <b>in Texas. And I certainly considered it in my head as I</b></p> <p>14 <b>was providing input on this legislation.</b></p> <p>15 Q. But presumably one alternative to banning the</p> <p>16 use of student IDs while also addressing the concerns</p> <p>17 you've addressed would be for the state to adopt</p> <p>18 guidelines or best practices with respect to</p> <p>19 university's issuance of students IDs, correct?</p> <p>20 <b>A. That could have been done. I'm not sure if</b></p> <p>21 <b>that would have been effective. And again, there's lot</b></p> <p>22 <b>of potential alternatives that were not considered or</b></p> <p>23 <b>adopted.</b></p> <p>24 Q. So that alternative was simply not considered?</p> <p>25 Is that your testimony?</p>



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<p style="text-align: right;">277</p> <p><b>1 A. I'm not aware that it was considered.</b></p> <p><b>2 Q.</b> Were there any other specific alternatives</p> <p><b>3</b> considered to address some of the concerns with the</p> <p><b>4</b> secureness of student IDs that you've discussed as</p> <p><b>5</b> opposed to simply an outright ban on their use?</p> <p><b>6 A. I don't believe so. And for my own sake,</b></p> <p><b>7 again, I think the impression was that people who had</b></p> <p><b>8 student IDs also had some other form of official photo</b></p> <p><b>9 ID.</b></p> <p><b>10 Q.</b> And what was the basis for that assumption?</p> <p><b>11 A. The entirety of testimony over multiple</b></p> <p><b>12 sessions.</b></p> <p><b>13 Q.</b> Is there any specific testimony you can recall</p> <p><b>14</b> that addressed that subject?</p> <p><b>15 A. I can't recall specific testimony.</b></p> <p><b>16 Q.</b> But it's your testimony you -- you may recall</p> <p><b>17</b> someone who testified that if you have a student ID,</p> <p><b>18</b> you're also likely to have other forms of acceptable ID?</p> <p><b>19 A. Again, I think, just today, I can't remember if</b></p> <p><b>20 this is jogging my memory or if it's what I've just</b></p> <p><b>21 learned today, but there was an estimate that 95 percent</b></p> <p><b>22 of voters have a driver's license. So that would</b></p> <p><b>23 confirm that, you know, to the extent students are</b></p> <p><b>24 voters, they also have a driver's license, at least in</b></p> <p><b>25 addition to whatever other CHL or passports or other</b></p>	<p style="text-align: right;">279</p> <p><b>1 With respect then to the issue of post</b></p> <p><b>2 Crawford, I believe the record already establishes that</b></p> <p><b>3 your office at least undertook no analysis of the number</b></p> <p><b>4 of registered voters in the state without an acceptable</b></p> <p><b>5 form of identification under SB 14; is that correct?</b></p> <p><b>6 A. I'm not aware of that analysis.</b></p> <p><b>7 Q.</b> Do you think that analysis would have been</p> <p><b>8</b> helpful in assessing the burden standard that Crawford</p> <p><b>9</b> established?</p> <p><b>10 A. I think, again, for my own sake, I can't speak</b></p> <p><b>11 for anyone else, that the entirety of the testimony over</b></p> <p><b>12 multiple sessions showing the impact on voter turnout in</b></p> <p><b>13 other states with photo ID, including Indiana, as well</b></p> <p><b>14 as the absence of any individual who was unable to</b></p> <p><b>15 obtain an ID and brought that claim to court, and any</b></p> <p><b>16 other state with photo ID was indicative to me that it</b></p> <p><b>17 was not going to be an undue burden.</b></p> <p><b>18 Q.</b> Okay. And in engaging in this analysis in the</p> <p><b>19</b> wake of Crawford, how did you define a permissible and</p> <p><b>20</b> an impermissible burden?</p> <p><b>21 A. I suppose, ultimately, about -- it was as an</b></p> <p><b>22 official manner, can the person obtain an identification</b></p> <p><b>23 and then what hurdles exist to get that identification,</b></p> <p><b>24 I'm not sure I can quantify it in any specific way.</b></p> <p><b>25 Q.</b> Okay. Well, at several points in the</p>
<p style="text-align: right;">278</p> <p><b>1 forms of ID are acceptable.</b></p> <p><b>2 Q.</b> And I believe we've already established that</p> <p><b>3</b> the Supreme Court's decision in Crawford was decided in</p> <p><b>4</b> 2008. Does that sound about right?</p> <p><b>5 A. I think that's right.</b></p> <p><b>6 Q.</b> And I believe you testified that you -- well, I</p> <p><b>7</b> shouldn't characterize your testimony. Did you pay</p> <p><b>8</b> close attention to Crawford after 2008?</p> <p><b>9 A. Yes.</b></p> <p><b>10 Q.</b> And the attempt was, I believe as you put it,</p> <p><b>11</b> to attempt to make sure that Texas' photo voter ID law</p> <p><b>12</b> would comply with the boundaries established by the</p> <p><b>13</b> Supreme Court in Crawford; is that correct?</p> <p><b>14 A. I certainly hoped it would.</b></p> <p><b>15 Q.</b> And would it be fair to say you did a</p> <p><b>16 comprehensive assessment of whether Texas' proposed</b></p> <p><b>17 photo ID laws complied with the Supreme Court's decision</b></p> <p><b>18 in Crawford?</b></p> <p><b>19 MS. HALPERN: Objection, vague.</b></p> <p><b>20 A. Yeah, I read Crawford. I've read the various</b></p> <p><b>21 stages of the bill and made assessments of whether it</b></p> <p><b>22 might be permissible under Crawford. But obviously,</b></p> <p><b>23 there's no way to know for sure until the court rules.</b></p> <p><b>24 Q.</b> (By Mr. Dunbar) And was your analysis of</p> <p><b>25</b> Crawford an attempt to -- well, strike that.</p>	<p style="text-align: right;">280</p> <p><b>1</b> deposition today, I believe you said that you were</p> <p><b>2</b> looking at whether there would be any individual that</p> <p><b>3</b> would be unable to obtain a form of voter ID. Does that</p> <p><b>4</b> accurately summarize your testimony?</p> <p><b>5 A. That is one thing that I considered was the</b></p> <p><b>6 success of plaintiff's in other jurisdictions with photo</b></p> <p><b>7 ID requirements.</b></p> <p><b>8 Q.</b> So the burden standard you applied in thinking</p> <p><b>9</b> about voter identification legislation in the wake of</p> <p><b>10</b> Crawford was whether the Texas law would leave any</p> <p><b>11</b> voters unable to obtain a form of ID?</p> <p><b>12 A. No, that's not the only thing I considered.</b></p> <p><b>13 Q.</b> What else did you consider?</p> <p><b>14 A. Again, what other hurdles might -- what burdens</b></p> <p><b>15 might be put upon a person trying to obtain</b></p> <p><b>16 identification or cast a vote and do the measures laid</b></p> <p><b>17 out in various forms of this legislation address those</b></p> <p><b>18 burdens and/or outweigh those burdens?</b></p> <p><b>19 Q.</b> Okay. And as a procedural matter, how did you</p> <p><b>20</b> go about attempting to identify the hurdles or burdens</p> <p><b>21</b> that an individual might face in attempting to get an</p> <p><b>22</b> EIC?</p> <p><b>23 A. To get an EIC?</b></p> <p><b>24 Q.</b> Correct. To obtain an acceptable form of</p> <p><b>25</b> identification.</p>

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<p style="text-align: right;">281</p> <p>1 <b>A. Just looking at the requirements of the</b> 2 <b>statute --</b> 3 MR. WHITLEY: I object to that question. 4 Are we talking about EICs or all the different forms of 5 identification on election day? 6 MR. DUNBAR: Well, I'm assuming that an 7 EIC is the lowest cost option, so I'm ask -- but I'll 8 ask the question generally. 9 Q. (By Mr. Dunbar) What you -- you've testified 10 or you've just testified that, in thinking about the 11 burden that the law would impose, you thought about the 12 hurdles that an individual might have to overcome in 13 order to obtain an acceptable form of ID. And I'm 14 asking, my question is -- and thank you for the 15 clarification. With respect to any of the acceptable 16 forms of ID, what process did you use to identify those 17 hurdles? 18 <b>A. Again, I just looked at the requirements to</b> 19 <b>obtain the forms of identification.</b> 20 Q. So you did no analysis of the actual location, 21 locations in the state that a voter would have to go to 22 get -- to acquire one of the acceptable forms of 23 identification? 24 <b>A. I believe there was significant discussion</b> 25 <b>during the floor debate and the Committee of the Whole</b></p>	<p style="text-align: right;">283</p> <p>1 <b>have offices located in them. There was discussion</b> 2 <b>about the operating hours of those offices that do</b> 3 <b>exist. There was discussion about the percentage of the</b> 4 <b>population that actually lives in these counties that</b> 5 <b>don't have offices and whether that is a significant</b> 6 <b>number of the population or not. And then there was a</b> 7 <b>discussion about what efforts going forward the</b> 8 <b>Secretary of State and DPS and other agencies might</b> 9 <b>undertake to -- to expand the access to identification.</b> 10 Q. And again, though, you didn't -- in undertaking 11 this burden analysis in the wake of Crawford, you didn't 12 do an independent study or analyses of the number of 13 voters that would actually be affected by SB 14; is that 14 correct? 15 <b>A. I did no independent analysis.</b> 16 MS. HALPERN: Counsel, how much more do 17 you think you have? 18 MR. DUNBAR: 10 to 15 minutes probably. 19 MS. HALPERN: How much more time does he 20 have? 21 THE REPORTER: I have to go off the record 22 to compute. 23 (Off the record from 5:38 to 5:40 p.m.) 24 MR. DUNBAR: Back on the record. Can you 25 repeat the last question?</p>
<p style="text-align: right;">282</p> <p>1 <b>about that topic.</b> 2 Q. But your office's analysis in the wake of 3 Crawford in analyzing the burden issue, you didn't look 4 into that issue? 5 <b>A. I don't think I did a separate analysis apart</b> 6 <b>from the hours of public testimony.</b> 7 Q. And so I also take it that means you did no 8 analysis of the hours of operation in the various DPS 9 locations; is that correct? 10 <b>A. I did not do any independent analysis apart</b> 11 <b>from the hours of testimony, correct.</b> 12 Q. And you would agree, wouldn't you, that those 13 factors would be relevant to an assessment of the burden 14 required with achieving an acceptable form of 15 identification? 16 <b>A. They are relevant. And again, I feel like they</b> 17 <b>were adequately addressed in the hours of testimony on</b> 18 <b>this bill over multiple sessions.</b> 19 Q. In any of those hours of testimony, do you 20 recall any quantification that was done with respect to 21 identifying the burdens of acquiring an acceptable form 22 of identification? 23 <b>A. Sure. I mean, I know there was -- and again,</b> 24 <b>it was presented to me in an exhibit today, there was a</b> 25 <b>specific number of counties that did not at the time</b></p>	<p style="text-align: right;">284</p> <p>1 (Requested portion read by the court 2 reporter.) 3 Q. (By Mr. Dunbar) And would there be any answer 4 to that analysis that would change your view of whether 5 SB 14 imposes an undue burden on the exercise of voting 6 rights? 7 MS. HALPERN: Objection, calls for a legal 8 conclusion. 9 Q. (By Mr. Dunbar) Go ahead, sir. 10 <b>A. So if an analysis showed that a significant</b> 11 <b>number of students do not have one of the acceptable</b> 12 <b>forms of ID, including a driver's license, and could not</b> 13 <b>obtain one of those forms of identification, then,</b> 14 <b>possibly, that would make me second-guess my conclusion.</b> 15 Q. My question was a slightly more basic one, 16 which is: If, hypothetically, you had undertaken the 17 analysis of the number of registered voters without an 18 acceptable form of ID and it turned out to, say, be 20 19 percent of the registered voter population, would you 20 find that significant or relevant to the burden 21 analysis? 22 <b>A. Possibly.</b> 23 Q. But it wouldn't change your view of 24 permissibility of SB 14? 25 <b>A. It would depend on the exact nature of that</b></p>

KEITH INGRAM

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<p style="text-align: right;">1</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE SOUTHERN DISTRICT OF TEXAS 3 CORPUS CHRISTI DIVISION 4 MARC VEASEY, et al., ) 5 ) 6 Plaintiffs, ) 7 ) 8 v. ) CIVIL ACTION NUMBER 9 ) 2:13-cv-193(NGR) 10 RICK PERRY, et al., ) 11 ) 12 Defendants. ) 13 ***** 14 ORAL DEPOSITION OF 15 KEITH INGRAM 16 APRIL 23, 2014 17 ***** 18 ORAL DEPOSITION OF KEITH INGRAM, produced as a 19 witness at the instance of PLAINTIFF UNITED STATES OF 20 AMERICA and duly sworn, was taken in the above-styled and 21 numbered cause on the 23rd day of April, 2014, from 22 9:02 a.m. to 6:13 p.m. before TEENA L. HARMON-DAVIS, a 23 Certified Shorthand Reporter in and for the State of 24 Texas, reported by machine shorthand at the offices of 25 Dechert LLP, 300 West Sixth Street, Suite 2010, Austin, Texas, pursuant to the Federal Rules of Civil Procedure and/or the provisions stated on the record or attached hereto.</p>	<p style="text-align: right;">3</p> <p>1 APPEARANCES/continued: 2 FOR THE TEXAS LEAGUE OF YOUNG VOTERS 3 PLAINTIFF-INTERVENORS: 4 Mr. Deuel Ross 5 Ms. Natasha M. Korgaonkar 6 NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC. 7 40 Rector Street, Fifth Floor 8 New York, New York 10006 9 dross@naacpldf.org 10 nkorgaonkar@naacpldf.org 11 and- 12 Ms. Lynn Eisenberg 13 WILMER CUTLER PICKERING HALE &amp; DORR, LLP 14 1875 Pennsylvania Avenue, NW 15 Washington, DC 20006 16 lyenn.eisenberg@wilmerhale.com 17 FOR THE ORTIZ PLAINTIFFS: 18 Mr. Robert W. Doggett 19 Mr. Jose Garza 20 TEXAS RIO GRANDE LEGAL AID, INC. 21 4920 North IH-35 22 Austin, Texas 78751 23 rdoggett@trla.org 24 jgarza@trla.org 25 FOR THE TEXAS ASSOCIATION OF HISPANIC COUNTY JUDGES AND COUNTY COMMISSIONERS PLAINTIFF-INTERVENORS: Mr. Rolando L. Rios ROLANDO L. RIOS &amp; ASSOCIATES, PLLC 115 East Travis, Suite 1645 San Antonio, Texas 78205 rrios@rolandorioslaw.com FOR THE DEFENDANTS: Mr. S. Ronald Keister Ms. Whitney Deason Ms. Lindsey Wolf OFFICE OF THE ATTORNEY GENERAL OF TEXAS P.O. Box 12548 Austin, Texas 78711 ronny.keister@oag.state.tx.us</p>
<p style="text-align: right;">2</p> <p>1 APPEARANCES 2 3 FOR PLAINTIFF UNITED STATES OF AMERICA: 4 Ms. Elizabeth S. Westfall 5 Ms. Jennifer Maranzano 6 U.S. DEPARTMENT OF JUSTICE 7 Civil Rights Division 8 950 Pennsylvania Avenue, NW 9 Washington, DC 20530 10 elizabeth.westfall@usdoj.gov 11 jennifer.maranzano@usdoj.gov 12 13 FOR THE VEASEY PLAINTIFFS: 14 Mr. Neil G. Baron 15 LAW OFFICE OF NEIL G. BARON 16 914 FM 517 West, Suite 242 17 Dickinson, Texas 77539 18 neil@ngbaronlaw.com 19 and- 20 Mr. Scott Brazil 21 BRAZIL &amp; DUNN, LLP 22 4201 Cypress Creek Parkway, Suite 530 23 Houston, Texas 77068 24 scott@brazilanddunn.com 25 26 FOR THE TEXAS STATE CONFERENCE OF NAACP BRANCHES 27 PLAINTIFFS: 28 Mr. Vishal Agraharkar 29 BRENNAN CENTER FOR JUSTICE 30 161 Avenue of the Americas, 12th Floor 31 New York, New York 10013 32 vishal.agraharkar@nyu.edu 33 and- 34 Mr. Ezra D. Rosenberg 35 DECHERT LLP 36 902 Carnegie Center, Suite 500 37 Princeton, New Jersey 08540 38 ezra.rosenberg@dechert.com</p>	<p style="text-align: right;">4</p> <p>1 APPEARANCES/continued: 2 Mr. Wroe Jackson 3 OFFICE OF THE SECRETARY OF STATE 4 Capitol Building, Room 1E.8 5 P.O. Box 12697 6 Austin, Texas 78711 7 wjackson@sos.state.tx.us 8 9 ALSO PRESENT: 10 Ms. Kathleen Murphy-Darveau 11 TEXAS DEPARTMENT OF PUBLIC SAFETY 12 (512) 424-2890 13 kathleen.murphy@dps.texas.gov 14 and - 15 Ms. Teena L. Harmon-Davis, Court Reporter 16 US LEGAL SUPPORT 17 701 Brazos, Suite 380 18 Austin, Texas 78701 19 (512) 292-4249 20 21 VIA TELEPHONE: 22 Ms. Jennifer Clark, Brennan Center for Justice 23 Ms. Emma Simpson, Campaign Legal Center 24 Ms. Myrna Perez, NAACP 25</p>

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5 (Pages 17 to 20)

<p style="text-align: right;">17</p> <p>1 consider those to be in the files of Ann McGeehan, but I</p> <p>2 did review those.</p> <p>3 Q. Did you review any documents authored by</p> <p>4 Elizabeth Winn?</p> <p>5 A. No, I mean, other than the hand she would have</p> <p>6 had in the first version of 81.71 and first version of</p> <p>7 the provisional ballot rules.</p> <p>8 MS. WESTFALL: Could you mark this.</p> <p>9 (Exhibit No. 2 marked)</p> <p>10 Q. I'm handing you what's been marked as</p> <p>11 Exhibit 2. Do you recognize this document?</p> <p>12 A. Yes.</p> <p>13 Q. What is it?</p> <p>14 A. It appears to be the answers to the first set</p> <p>15 of interrogatories from the State of Texas.</p> <p>16 Q. Did you assist in the preparation of these</p> <p>17 interrogatory responses?</p> <p>18 A. I did.</p> <p>19 Q. What were the interrogatories you contributed</p> <p>20 to as a general matter?</p> <p>21 A. Generally I helped with the ones that related</p> <p>22 to our office.</p> <p>23 Q. And those would include?</p> <p>24 A. Do you want specific numbers?</p> <p>25 Q. Please.</p>	<p style="text-align: right;">19</p> <p>1 eliminate non-citizens, so I believe they're on that</p> <p>2 list.</p> <p>3 Q. The jury wheel list that you get from DPS; is</p> <p>4 that correct?</p> <p>5 A. That's correct.</p> <p>6 Q. And then your office removes non-citizens and</p> <p>7 persons with felony convictions; is that correct?</p> <p>8 A. That's correct.</p> <p>9 Q. And you prepare the jury list; is that right?</p> <p>10 A. That's right.</p> <p>11 Q. What data elements from the TEAM database were</p> <p>12 matched against the jury wheel list that was conducted in</p> <p>13 July 2013?</p> <p>14 A. What we did is -- we compared several different</p> <p>15 ways, but primarily the name, first name, last name, date</p> <p>16 of birth, and any identifying numbers that might have</p> <p>17 been included, so either the driver license number or the</p> <p>18 last four of the Social or, if we had it, the full nine</p> <p>19 of the Social.</p> <p>20 Q. And were those the sum total of the fields that</p> <p>21 you matched?</p> <p>22 A. I am not sure about middle name. I do not</p> <p>23 believe it's used in that process.</p> <p>24 Q. Who in your office conducted the match?</p> <p>25 A. Betsy Schonhoff is my voter registration</p>
<p style="text-align: right;">18</p> <p>1 A. Number 1, number 3, number 8 indirectly,</p> <p>2 number 9 indirectly, number 10 directly, number 11</p> <p>3 directly, number 12, number 13, number 14, number 16,</p> <p>4 number 17, number 18, number 19, number 22, 24 and 25</p> <p>5 were, sort of, and I believe that's it.</p> <p>6 Q. Thank you. The interrogatory responses state</p> <p>7 that in July 2013 the voter registration list was matched</p> <p>8 against the jury wheel used by DPS. Is that correct?</p> <p>9 A. That's correct.</p> <p>10 Q. Were you involved in that matching process or</p> <p>11 overseeing that matching process?</p> <p>12 A. I did.</p> <p>13 Q. What is the jury wheel list?</p> <p>14 A. The jury wheel is a list of persons with a</p> <p>15 driver license and a state ID that the DPS provides to us</p> <p>16 once a year for the purpose of constituting the list of</p> <p>17 jurors for each county.</p> <p>18 Q. And how does that differ from the list of</p> <p>19 driver license holders and personal ID holders?</p> <p>20 A. I don't know.</p> <p>21 Q. Is it different insofar as it is limited to</p> <p>22 U.S. citizens and persons without felony convictions?</p> <p>23 A. I believe that one of the first things we do</p> <p>24 with the jury wheel when we're making -- we do with that</p> <p>25 list from the DPS when we're making the jury wheel is</p>	<p style="text-align: right;">20</p> <p>1 manager, so she interfaced directly with our IT</p> <p>2 department, and our IT department would actually do the</p> <p>3 sequel server queries to generate the list.</p> <p>4 Q. How many active voters were not present on the</p> <p>5 jury wheel list?</p> <p>6 A. I don't know.</p> <p>7 Q. Do you have any ballpark estimate?</p> <p>8 A. I'm not sure what you're asking. If you're</p> <p>9 asking about the number of people that didn't match with</p> <p>10 an ID -- is that what you're asking?</p> <p>11 Q. Yes.</p> <p>12 A. It was just under 800,000, 795,000 or so.</p> <p>13 Q. This was a number that was -- that came out of</p> <p>14 the July 2013 match?</p> <p>15 A. It's in that ballpark. It might have been</p> <p>16 seven-eighty-five, but it was somewhere in the upper</p> <p>17 700,000, yes, ma'am.</p> <p>18 Q. Do you recall that a similar type of matching</p> <p>19 process was conducted in 2011?</p> <p>20 A. Yes.</p> <p>21 Q. And was the matching result roughly the same?</p> <p>22 A. I believe it was less than that. I'm not sure</p> <p>23 exactly what process was used in September of '11. That</p> <p>24 was prior to my time with the Secretary of State's</p> <p>25 Office. But it's my recollection that that number was</p>

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<p style="text-align: right;">21</p> <p>1 something under 700,000 non-matches.</p> <p>2 Q. So just to be clear about your testimony, is it</p> <p>3 your testimony that the Secretary of State's Office</p> <p>4 prepared a jury wheel list from information from the DPS</p> <p>5 and then you compared the jury wheel list with a list of</p> <p>6 registered voters? Is that correct?</p> <p>7 A. No, ma'am.</p> <p>8 Q. Could you clarify?</p> <p>9 A. No, we took the DPS database that they provided</p> <p>10 for jury wheel purposes and matched the voter</p> <p>11 registration database against that database, so we didn't</p> <p>12 match it against the actual jury wheel. The jury wheel</p> <p>13 consists of both registered voters and driver license</p> <p>14 holders, and the goal of making the jury wheel is to make</p> <p>15 sure that duplicates aren't on that list.</p> <p>16 Q. I see. I see.</p> <p>17 A. So that somebody's not on the jury list because</p> <p>18 they've got a driver license and on the jury list because</p> <p>19 they're a registered voter.</p> <p>20 Q. I see. Did you provide the matching results</p> <p>21 from this July 2013 match to anyone outside of the</p> <p>22 Secretary of State's Office?</p> <p>23 A. We did.</p> <p>24 Q. Who were those entities or people?</p> <p>25 A. I'm not sure if I can remember all of them off</p>	<p style="text-align: right;">23</p> <p>1 Q. Okay. And then how did counties and other</p> <p>2 entities, such as Ms. Haltom and Chris Tomlinson, learn</p> <p>3 about the existence of this match?</p> <p>4 MR. KEISTER: Objection, calls for</p> <p>5 speculation.</p> <p>6 A. I don't know how Sondra Haltom and</p> <p>7 Chris Tomlinson learned about it. The counties learned</p> <p>8 about it because we were contacting them and we were</p> <p>9 letting them know that we had done this match and we had</p> <p>10 a list of ZIP codes in their counties and the numbers of</p> <p>11 non-matches within those ZIP codes and did they know of</p> <p>12 anyplace where an EIC unit could be set up within those</p> <p>13 ZIP codes.</p> <p>14 Q. I see. And just to be clear -- because it's</p> <p>15 not clear in my mind or I misunderstood the interrogatory</p> <p>16 response. You prepared -- you obtained -- the process</p> <p>17 was that you obtained from DPS the list of driver license</p> <p>18 and personal ID holders and you created the jury wheel,</p> <p>19 is that correct, in-house?</p> <p>20 A. That's right.</p> <p>21 Q. And then you took the jury wheel and you</p> <p>22 compared it with the TEAM database; is that correct?</p> <p>23 A. No.</p> <p>24 Q. Correct me, because I'm not understanding the</p> <p>25 matching process.</p>
<p style="text-align: right;">22</p> <p>1 the top of my head. I know Sondra Haltom from Empower</p> <p>2 the Vote Texas requested it. I know that Chris Tomlinson</p> <p>3 from the Associated Press requested it. We also provided</p> <p>4 it to counties who asked for their particular voters who</p> <p>5 were non-matches, so there were some counties -- I know</p> <p>6 Dallas, Travis, I believe Harris all asked for their list</p> <p>7 for their county of persons who didn't match within their</p> <p>8 county.</p> <p>9 Q. Were there any other counties you can recall at</p> <p>10 this time?</p> <p>11 A. I don't know. I can't -- I mean, there might</p> <p>12 have been some smaller ones that asked for it as well.</p> <p>13 But I know -- I know Travis did, I know Dallas was</p> <p>14 interested in it, and I know that Harris was.</p> <p>15 Q. Why did you conduct this match?</p> <p>16 A. The purpose of that match was to get an idea by</p> <p>17 ZIP code of where concentrations of voters would be that</p> <p>18 didn't match with a driver license or state ID. We were</p> <p>19 contemplating the use of mobile election identification</p> <p>20 certificate units and we wanted to have some idea -- a</p> <p>21 rough idea, because obviously non-matches doesn't mean</p> <p>22 they don't have an ID. But we wanted to have a rough</p> <p>23 idea of where the voters might be concentrated who could</p> <p>24 benefit from election identification certificate mobile</p> <p>25 unit.</p>	<p style="text-align: right;">24</p> <p>1 A. The purpose of mentioning the jury wheel is to</p> <p>2 say that it was the driver license database associated</p> <p>3 with the jury wheel process.</p> <p>4 Q. I see. I see.</p> <p>5 A. So we matched with the DPS database that we use</p> <p>6 for jury wheel.</p> <p>7 Q. Did you contact every single county about the</p> <p>8 results of this match?</p> <p>9 A. No, ma'am.</p> <p>10 Q. How did you identify which counties?</p> <p>11 A. Like I said, the purpose of this was we were</p> <p>12 investigating where to send mobile EIC units, and so the</p> <p>13 goal was to find -- there were two competing variables</p> <p>14 with regard to mobile EIC units; number 1, we wanted to</p> <p>15 make sure that rural communities had access to EICs if</p> <p>16 they needed an election identification certificate. So</p> <p>17 that was one interest at stake with regard to the EIC</p> <p>18 mobile program. The other interest was to find</p> <p>19 concentrations of voters that may benefit from this</p> <p>20 program. So with regard to this matching exercise, it</p> <p>21 was -- the purpose was to find concentrations of voters</p> <p>22 that could benefit, potentially, from an EIC, and so</p> <p>23 that's the reason those counties with high concentrations</p> <p>24 in a ZIP code were contacted. Obviously, in Reeves</p> <p>25 County or Upton or any of the other rural counties, they</p>



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<p style="text-align: right;">25</p> <p>1 <b>don't have large concentrations of voters. The matching</b>  2 <b>exercise was not really pertinent to that aspect of the</b>  3 <b>mobile EIC program.</b></p> <p>4 Q. So in some you contacted some counties with  5 large concentrations and some counties with rural  6 populations that might not have a driver license office  7 or where you were contemplating putting a mobile EIC  8 unit?</p> <p>9 <b>A. Right. And it wasn't just that they didn't</b>  10 <b>have a driver license full time in their county, it was</b>  11 <b>that they were rural and they could be -- you know, even</b>  12 <b>if it was within the same county, they could be a</b>  13 <b>significant distance away from the driver license office,</b>  14 <b>so we wanted to make sure that there was rural coverage.</b></p> <p>15 Q. How many counties was it total that you  16 contacted, approximately?</p> <p>17 <b>A. With regard to what?</b></p> <p>18 Q. With regard to the jury wheel match results in  19 July 2013.</p> <p>20 <b>A. I am not sure. It would have been all of the</b>  21 <b>big ones, so Bexar, Harris, Dallas, Travis, Williamson,</b>  22 <b>Hays, Fort Bend, Brazoria, Jefferson. You know, it would</b>  23 <b>have been all of the larger counties, Cameron, Hidalgo.</b></p> <p>24 Q. Did you produce the matching results to your  25 counsel in this litigation?</p>	<p style="text-align: right;">27</p> <p>1 <b>the voters in it is very large.</b></p> <p>2 Q. We would request both of those matching  3 results. Thank you for your clarification.</p> <p>4 MR. KEISTER: Counsel, let me just state  5 on the record I do not know if those have been produced  6 or not. I'm not saying they have, I'm not saying they  7 haven't. And just to make it clear, my memory is not as  8 good as it once was, so don't rely upon anything said at  9 the deposition for me to follow up on. Please give it to  10 me in writing or give it to us in writing.</p> <p>11 MS. WESTFALL: Certainly we will do that.</p> <p>12 MR. KEISTER: Not to be problematic, but  13 I'm sure by the end of the day this will all be gone from  14 my memory.</p> <p>15 MS. WESTFALL: We will do that. Thank  16 you.</p> <p>17 BY MS. WESTFALL:</p> <p>18 <b>Q. Did you contact any voters on the matching list</b>  19 <b>individually and advise them of SB 14's ID requirements</b>  20 <b>or the availability of an EIC?</b></p> <p>21 <b>A. No, ma'am.</b></p> <p>22 <b>Q. Why didn't you do that?</b></p> <p>23 <b>A. Well, because there's too many of them. I</b>  24 <b>don't know -- you know, we break it down by county. The</b>  25 <b>counties deal with their voters. So I know that</b></p>
<p style="text-align: right;">26</p> <p>1 <b>A. I believe so, yes, ma'am.</b></p> <p>2 Q. Have they been turned over to the United States  3 and the other plaintiffs in this litigation?</p> <p>4 <b>A. I don't know.</b></p> <p>5 MS. WESTFALL: Mr. Keister, have the  6 matching results been produced in this litigation?</p> <p>7 MR. KEISTER: Counsel, I can't answer that  8 question. I'm sorry.</p> <p>9 MS. WESTFALL: Could you, after this  10 deposition, look into that and determine whether you  11 have? And we would request that the matching results be  12 produced. They are responsive to our request for  13 production.</p> <p>14 <b>A. Could I clarify that request?</b></p> <p>15 Q. Certainly.</p> <p>16 <b>A. There's two different forms that this response</b>  17 <b>takes. They're both in an Excel spreadsheet. There's</b>  18 <b>one that is just broken out by county by ZIP code, so it</b>  19 <b>just has the numbers on it, and then there's another one</b>  20 <b>that has the actual voters underneath those numbers. You</b>  21 <b>want one or both of those?</b></p> <p>22 Q. So there are two files, one is a summary by  23 county of the number of voters and one is a list of the  24 actual voters; is that correct?</p> <p>25 <b>A. That's right. And so, you know, the one with</b></p>	<p style="text-align: right;">28</p> <p>1 <b>Bruce Elfant here in Travis County sent all of his voters</b>  2 <b>on that list a postcard. I know that Toni Pippins Poole</b>  3 <b>did it up in Dallas. And so it's their responsibility to</b>  4 <b>interface with their voters if they feel the need to do</b>  5 <b>so.</b></p> <p>6 <b>Q. And as the Secretary of State responsible for</b>  7 <b>enforcing the statute, SB 14, you did not feel it was</b>  8 <b>within your responsibility to contact the voters</b>  9 <b>individually?</b></p> <p>10 <b>A. We have not -- as an office we have not made</b>  11 <b>that decision. There are budgetary and resource</b>  12 <b>constraints that are all too real whenever we're talking</b>  13 <b>about a list that large.</b></p> <p>14 <b>Q. So was it -- it was budgetary and resource</b>  15 <b>constraints that caused you to conclude at that time that</b>  16 <b>you were not going to contact voters individually? Is</b>  17 <b>that your testimony?</b></p> <p>18 <b>A. Yes, ma'am.</b></p> <p>19 Q. Did you have on that list of matched voters  20 phone numbers for those voters?</p> <p>21 <b>A. No, ma'am.</b></p> <p>22 Q. They're not available --</p> <p>23 MS. WESTFALL: Strike that.</p> <p>24 Q. Do voters supply their phone number when they  25 register to vote?</p>

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<p style="text-align: right;">29</p> <p>1 <b>A. Some do.</b></p> <p>2 Q. And is that information in the TEAM database?</p> <p>3 <b>A. I don't believe so.</b></p> <p>4 Q. It's not input in the TEAM database?</p> <p>5 <b>A. No, ma'am.</b></p> <p>6 Q. What are those phone numbers used for when</p> <p>7 they're input on the voter registration application?</p> <p>8 <b>A. The counties sometimes use them to contact the</b></p> <p>9 <b>voters.</b></p> <p>10 Q. Is it your testimony that there are no phone</p> <p>11 numbers associated with individual voters in the TEAM</p> <p>12 database?</p> <p>13 <b>A. I don't know for sure, but I don't believe</b></p> <p>14 <b>there are.</b></p> <p>15 Q. Aside from Sondra Haltom, Chris Tomlinson, and</p> <p>16 the counties, did anyone else request this list?</p> <p>17 <b>A. I don't remember. I think there were a couple</b></p> <p>18 <b>of other requests, but I don't know who they were. I</b></p> <p>19 <b>know that in response to Interrogatory No. 17 we provided</b></p> <p>20 <b>a spreadsheet with the folks who had requested that list.</b></p> <p>21 Q. Did the Secretary of State's Office play any</p> <p>22 role in the development of the EIC application form?</p> <p>23 <b>A. No, ma'am.</b></p> <p>24 Q. And by EIC I'm referring to the election</p> <p>25 identification certificate, okay?</p>	<p style="text-align: right;">31</p> <p>1 please.</p> <p>2 (Exhibit No. 3 marked)</p> <p>3 Q. I'm handing you what's been marked as</p> <p>4 Exhibit 3. Have you seen this document before?</p> <p>5 <b>A. No, ma'am.</b></p> <p>6 Q. Did the Department of Public Safety solicit the</p> <p>7 views of your office about whether to require EIC</p> <p>8 applicants to provide fingerprints?</p> <p>9 <b>A. They didn't solicit our advice. We gave it</b></p> <p>10 <b>unsolicited.</b></p> <p>11 Q. Who in your office gave that input?</p> <p>12 <b>A. Myself and Secretary Steen.</b></p> <p>13 Q. When was that input provided?</p> <p>14 <b>A. Several occasions.</b></p> <p>15 Q. Do you know approximately the first time that</p> <p>16 you provided input on fingerprinting requirements?</p> <p>17 MR. KEISTER: Mr. Ingram, let me advise</p> <p>18 you that to the extent that it was deliberative process</p> <p>19 of the Secretary of State's Office, I'm going to advise</p> <p>20 you not to answer, but if it's not within deliberative</p> <p>21 process, you can.</p> <p>22 <b>A. You're talking about the date?</b></p> <p>23 MS. WESTFALL: And, Mr. Keister, the</p> <p>24 Department of Public Safety was the entity responsible</p> <p>25 for administering the EICs, so I'm not sure what decision</p>
<p style="text-align: right;">30</p> <p>1 <b>A. Okay.</b></p> <p>2 Q. Did the Secretary of State's Office play any</p> <p>3 role in developing the regulations promulgated by the</p> <p>4 Department of Public Safety pertaining to EICs?</p> <p>5 <b>A. I don't know. I think so.</b></p> <p>6 Q. Do you know what that role or participation</p> <p>7 was?</p> <p>8 <b>A. Well, when we were contemplating the use of</b></p> <p>9 <b>mobile election identification certificate units we were</b></p> <p>10 <b>trying to gather the list of equipment that would be</b></p> <p>11 <b>required to issue election identification certificates on</b></p> <p>12 <b>a remote basis away from the office, and there was some</b></p> <p>13 <b>equipment in there that we asked questions about, and I</b></p> <p>14 <b>believe as a result of our question asking the need for</b></p> <p>15 <b>that equipment went away, so I don't know how that played</b></p> <p>16 <b>out over on the DPS side.</b></p> <p>17 Q. Who in your office interfaced with the</p> <p>18 Department of Public Safety, if you know, over these --</p> <p>19 concerning the promulgation of regulations related to</p> <p>20 EICs?</p> <p>21 <b>A. And that's -- that's my point. It wasn't</b></p> <p>22 <b>directly regarding the promulgation of regulations, but</b></p> <p>23 <b>it did, I think, have an impact on the final version of</b></p> <p>24 <b>those regulations.</b></p> <p>25 MS. WESTFALL: Could you mark this as 3,</p>	<p style="text-align: right;">32</p> <p>1 you are referring to that would have been made by the SCS</p> <p>2 with regard to fingerprinting.</p> <p>3 MR. KEISTER: Well, what you're asking</p> <p>4 for, to me, is calling for the deliberations of the</p> <p>5 Secretary of State with respect to advice they gave to</p> <p>6 the Department of Public Safety. And to the extent,</p> <p>7 Mr. Ingram, that that is within the deliberative process,</p> <p>8 the process that you guys went through, then I'm going to</p> <p>9 instruct you not to answer.</p> <p>10 MS. WESTFALL: Could you read back the</p> <p>11 question, please.</p> <p>12 (Question read by the reporter)</p> <p>13 <b>A. So --</b></p> <p>14 MR. KEISTER: With respect to that</p> <p>15 question you can answer, but with respect to any</p> <p>16 underlying conversations or deliberations between you and</p> <p>17 your office, don't give any additional information.</p> <p>18 <b>A. The timing of it would have been in July and</b></p> <p>19 <b>August of 2013.</b></p> <p>20 Q. What was your input with regard to</p> <p>21 fingerprinting?</p> <p>22 <b>A. It was our belief that fingerprinting was</b></p> <p>23 <b>unnecessary with regard to an election identification</b></p> <p>24 <b>certificate.</b></p> <p>25 Q. What was the basis of your view?</p>

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9 (Pages 33 to 36)

<p style="text-align: right;">33</p> <p>1 A. It was the basis for our view that SB 14 had in</p> <p>2 its transportation code amendment that the requirements</p> <p>3 that the DPS could require for the election</p> <p>4 identification certificate said that they may require the</p> <p>5 same identification points as a driver license requires,</p> <p>6 which would have included fingerprint, and since that</p> <p>7 language was worded permissively it didn't require all of</p> <p>8 the elements that are required to obtain a driver license</p> <p>9 and that we felt that fingerprinting for this process to</p> <p>10 prevent in-person voter impersonation fraud for a</p> <p>11 single-use certificate that could only be used for voting</p> <p>12 was unnecessary and didn't need to be.</p> <p>13 Q. Are you aware that the DPS regulations</p> <p>14 concerning the application form and what an applicant has</p> <p>15 to provide for an EIC do require fingerprinting?</p> <p>16 A. That was DPS' response, that their rule</p> <p>17 required it, and I said, well, that's your rule and it</p> <p>18 can be changed.</p> <p>19 Q. And are you aware that as of today it hasn't</p> <p>20 changed?</p> <p>21 A. I am not aware of that, no, ma'am.</p> <p>22 Q. Was there ever a time when applicants for an</p> <p>23 EIC were required to provide fingerprints?</p> <p>24 A. I believe so, yes, ma'am.</p> <p>25 Q. What was that period of time?</p>	<p style="text-align: right;">35</p> <p>1 A. I don't know how many. That's just my best</p> <p>2 guess.</p> <p>3 Q. Does a voter registration applicant in Texas</p> <p>4 need to provide fingerprints?</p> <p>5 A. No, ma'am.</p> <p>6 Q. Do you know who made the decision at DPS to</p> <p>7 require fingerprints?</p> <p>8 A. I have no idea.</p> <p>9 Q. Do you know whether an applicant for a U.S.</p> <p>10 passport needs to provide fingerprints?</p> <p>11 A. I don't know. I doubt -- I don't think so.</p> <p>12 Q. Do you know whether a person in the military</p> <p>13 obtaining an ID needs to provide fingerprints?</p> <p>14 A. I don't know. I don't think so. I should ask</p> <p>15 my son.</p> <p>16 Q. Do you know what offices EIC applicants were</p> <p>17 required to provide fingerprints in?</p> <p>18 A. No, ma'am.</p> <p>19 Q. Or what counties?</p> <p>20 A. No.</p> <p>21 Q. Do you know whether any voters were deterred</p> <p>22 from applying for EICs due to this fingerprinting</p> <p>23 requirement?</p> <p>24 A. I have no idea.</p> <p>25 Q. How many conversations did you have with the</p>
<p style="text-align: right;">34</p> <p>1 A. Before July or August of 2013. So there</p> <p>2 were -- I don't know. At that point seems like there</p> <p>3 might have been 17 or 20 that had been issued statewide,</p> <p>4 and probably those folks gave fingerprints.</p> <p>5 Q. So that was between the period when the law</p> <p>6 began to be enforced around the 25th of June 2013 and</p> <p>7 sometime in July 2013; is that correct?</p> <p>8 A. Or perhaps August, but yes, ma'am.</p> <p>9 Q. Were there any complaints received by your</p> <p>10 office or by county election officials about the</p> <p>11 fingerprinting requirement?</p> <p>12 A. No, ma'am.</p> <p>13 Q. How did this issue come to your attention?</p> <p>14 A. Like I said, it was with regard to getting a</p> <p>15 list of equipment that would be required to do mobile</p> <p>16 election identification certificates.</p> <p>17 Q. And one of the items in that equipment related</p> <p>18 to fingerprinting; is that correct?</p> <p>19 A. That's right.</p> <p>20 Q. And that's how it was brought to your</p> <p>21 attention; is that right?</p> <p>22 A. Yes.</p> <p>23 Q. And to your knowledge about 15 to 20 people had</p> <p>24 to be fingerprinted during that period when fingerprints</p> <p>25 were required?</p>	<p style="text-align: right;">36</p> <p>1 Department of Public Safety concerning fingerprinting?</p> <p>2 A. How many? I don't know. Three or four.</p> <p>3 Q. Who at the Department of Public Safety did you</p> <p>4 communicate your views to?</p> <p>5 A. We communicated our views to Mr. Bodisch,</p> <p>6 Mr. Peters, and Mr. McCraw, Colonel McCraw.</p> <p>7 Q. What was their reaction?</p> <p>8 A. I don't know. I don't know what you mean.</p> <p>9 Q. Did they respond favorably to your suggestion</p> <p>10 to remove that requirement or were they resistant?</p> <p>11 A. They were resistant.</p> <p>12 Q. What was the basis of their views as you</p> <p>13 perceived them?</p> <p>14 MR. KEISTER: Calls for speculation.</p> <p>15 A. I don't know.</p> <p>16 Q. What did they tell you as to why they needed to</p> <p>17 continue this requirement?</p> <p>18 A. I don't know. I don't -- their view was that</p> <p>19 they're a law enforcement agency and as a law enforcement</p> <p>20 agency that's their primary way to look at the world and</p> <p>21 when they've got the opportunity to interface with</p> <p>22 someone they want to get that data on that person and</p> <p>23 that the potential for somebody to impersonate someone to</p> <p>24 get an EIC existed apart from the fingerprint to confirm</p> <p>25 their identity.</p>

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10 (Pages 37 to 40)

<p style="text-align: right;">37</p> <p>1 Q. Do you know what the Department of Public 2 Safety -- and I'm going to refer to it interchangeably as 3 DPS and Department of Public Safety. Do you know what 4 they did with the fingerprints when they obtained the 5 fingerprints from the EIC applicants? 6 A. No, ma'am. 7 Q. Do you know what the standard practice is of 8 DPS when they obtain fingerprints from applicants for 9 other forms of ID? 10 A. I do not. 11 Q. Are you confident sitting here today that no 12 DPS offices are requiring fingerprinting of EIC 13 applicants? 14 A. I am not. 15 Q. Do you know who would know the answer to that 16 question? 17 A. The Department of Public Safety. 18 Q. Do you know who at DPS would know? 19 A. I don't know for sure who over there would 20 know. Probably all of the ones that I mentioned would 21 know as well as Mr. Rodriguez. 22 Q. And was there a time after you had three or 23 four conversations with DPS that they agreed with your 24 position and decided that fingerprints would not be 25 required?</p>	<p style="text-align: right;">39</p> <p>1 instruct him not to answer his personal opinions. That's 2 outside the scope of what we're here for today. He's 3 here to testify on the areas in the subpoena, and that's 4 not his personal opinions. 5 MS. WESTFALL: Well, Mr. Keister, we can 6 certainly notice Mr. Ingram for another deposition in his 7 personal capacity if that's how you would like to proceed 8 or we could try to efficiently conduct this deposition 9 and have him here for one day. 10 MR. KEISTER: Counsel, that's your call 11 how you want to proceed, but I'm going to instruct 12 Mr. Ingram only to testify, to the extent possible, as to 13 the issues in the subpoena, and that's -- and I do not 14 want this record to confuse Mr. Ingram's personal 15 opinions for being that of the Office of the Secretary of 16 State. It's going to be a long depo, and I'm afraid it 17 will get confused. 18 MS. WESTFALL: I'll ask it a different 19 way. 20 MR. KEISTER: Okay. 21 BY MS. WESTFALL: 22 Q. From the standpoint of the Secretary of State's 23 Office was the Secretary of State at any time concerned 24 that some voters might be intimidated by the 25 fingerprinting requirement?</p>
<p style="text-align: right;">38</p> <p>1 A. There was, and that the equipment that we 2 purchased for the mobile EIC units did not include the 3 fingerprint equipment. 4 Q. And it's your testimony this was about 5 August 2013? 6 A. Yes, because we started the actual usage of the 7 mobile EICs in the middle of September, so it would have 8 been late August or early September. 9 Q. Do you know whether the determination to stop 10 requiring fingerprinting was communicated to DPS 11 personnel? 12 A. I have no idea. 13 Q. Do you know who would know the answer to that 14 question? 15 A. The folks over at DPS. 16 Q. Were you concerned -- was part of the reason 17 why you didn't feel fingerprinting was necessary was that 18 you were concerned that fingerprinting EIC applicants 19 would be intimidating to those voters? 20 MR. KEISTER: Objection. Are you asking 21 Mr. Ingram his personal opinion or are you asking is 22 there a position of the Secretary of State? 23 MS. WESTFALL: I'm asking his personal 24 opinion. 25 MR. KEISTER: Well, then I'm going to</p>	<p style="text-align: right;">40</p> <p>1 A. I don't know if intimidated is the correct 2 word. It felt to us like it was unnecessary and would 3 create an additional hurdle that might be a problem for 4 some voters for whatever reason, and we did not believe 5 that the hurdle was necessary. 6 Q. Did you think that the Secretary of State's 7 Office felt that voters might be discouraged from 8 applying for an EIC because of this requirement? 9 MR. KEISTER: Once again, Mr. Ingram -- 10 are you asking for his personal opinion at this point or 11 are you asking for the Office of the Secretary of State? 12 MS. WESTFALL: The Office of the Secretary 13 of State. 14 A. We were of the opinion that it would create 15 a hurdle for some voters that was unnecessary. 16 Q. Are EIC applicants required to provide 17 documentary proof of U.S. citizenship? 18 A. I believe so. I believe they're required to 19 produce proof of citizenship and identification, but the 20 specific elements of those requirements would be a DPS 21 question. 22 Q. And could the decision to require or not 23 require fingerprints be reversed at any time? 24 A. I don't know. 25 Q. Do you know why EIC applicants are required to</p>

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11 (Pages 41 to 44)

<p style="text-align: right;">41</p> <p>1 provide documentary proof of U.S. citizenship?</p> <p>2 <b>A. I do not.</b></p> <p>3 Q. Did DPS solicit the views of the Secretary of</p> <p>4 State on this issue?</p> <p>5 <b>A. No, ma'am.</b></p> <p>6 Q. Do you know who at DPS decided that EIC</p> <p>7 applicants would have to provide documentary proof of</p> <p>8 U.S. citizenship?</p> <p>9 <b>A. I do not.</b></p> <p>10 Q. Do you know what the purpose of this</p> <p>11 requirement is?</p> <p>12 <b>A. I do not.</b></p> <p>13 Q. It's not required by SB 14, is it?</p> <p>14 <b>A. SB 14 says that the DPS can require the same</b></p> <p>15 <b>elements of proof of ID and proof of citizenship that are</b></p> <p>16 <b>required for a driver license.</b></p> <p>17 Q. Do you think documentary proof of citizenship</p> <p>18 is a necessary requirement for EIC applicants?</p> <p>19 <b>MR. KEISTER: Objection. Once again,</b></p> <p>20 <b>counsel, I'm going to instruct --</b></p> <p>21 Q. On behalf of the Secretary of State.</p> <p>22 <b>A. Our office has no position on that.</b></p> <p>23 Q. Is documentary proof of citizenship required</p> <p>24 when you register to vote in Texas?</p> <p>25 <b>A. No, ma'am.</b></p>	<p style="text-align: right;">43</p> <p>1 characterization of testimony as a dispute.</p> <p>2 Q. You may answer.</p> <p>3 <b>A. The mobile EIC units did not have realtime</b></p> <p>4 <b>connectivity.</b></p> <p>5 Q. So in other words, the mobile EIC units did not</p> <p>6 conduct background checks of EIC applicants?</p> <p>7 <b>A. I don't know. They did not have realtime</b></p> <p>8 <b>Internet connectivity for performing said background</b></p> <p>9 <b>checks in realtime.</b></p> <p>10 Q. Do you know whether EIC applicants who went to</p> <p>11 driver license offices were subjected to background</p> <p>12 checks?</p> <p>13 <b>A. I do not know.</b></p> <p>14 Q. Do you know who would know that?</p> <p>15 <b>A. The DPS.</b></p> <p>16 Q. Who at DPS?</p> <p>17 <b>A. I don't know.</b></p> <p>18 Q. Do you know whether EIC applicants had -- when</p> <p>19 they submitted their application, had a check for arrest</p> <p>20 warrants as part of the background check you described?</p> <p>21 <b>A. I believe that was the purpose of the</b></p> <p>22 <b>background check.</b></p> <p>23 Q. Do you believe background checks are occurring</p> <p>24 currently for EIC applicants?</p> <p>25 <b>A. I have no idea.</b></p>
<p style="text-align: right;">42</p> <p>1 Q. Is it required to obtain a license to carry a</p> <p>2 concealed handgun?</p> <p>3 <b>A. I don't know.</b></p> <p>4 Q. Is it required to obtain a Texas driver</p> <p>5 license?</p> <p>6 <b>A. I don't know.</b></p> <p>7 Q. Is it required to obtain a Texas personal ID</p> <p>8 card from DPS?</p> <p>9 <b>A. I don't know.</b></p> <p>10 Q. At any point were EIC applications compared</p> <p>11 against other state databases to see if the applicant had</p> <p>12 any outstanding traffic tickets?</p> <p>13 <b>A. I'm not sure.</b></p> <p>14 Q. Have you heard anything about this before?</p> <p>15 <b>A. Well, I know that when we were getting the</b></p> <p>16 <b>mobile EIC unit concept underway that one of the</b></p> <p>17 <b>requirements was realtime connectivity at a fairly high</b></p> <p>18 <b>data bit rate, and when we questioned the need for that</b></p> <p>19 <b>the response was that it was to perform background</b></p> <p>20 <b>checks. So I don't know if a background check includes</b></p> <p>21 <b>unpaid traffic tickets or not, but that was another thing</b></p> <p>22 <b>that we felt was unnecessary.</b></p> <p>23 Q. What was the resolution of your dispute with</p> <p>24 DPS as to background checks on applicants?</p> <p>25 <b>MR. KEISTER: Objection to the</b></p>	<p style="text-align: right;">44</p> <p>1 Q. Is there any state law that you're aware of</p> <p>2 that would prevent DPS from conducting background checks</p> <p>3 of EIC applicants?</p> <p>4 <b>A. No, ma'am.</b></p> <p>5 Q. And the Secretary of State's Office doesn't</p> <p>6 compare voter registration applications against data</p> <p>7 showing whether you have an outstanding traffic ticket,</p> <p>8 does it?</p> <p>9 <b>A. No.</b></p> <p>10 Q. And when you're processing voter registration</p> <p>11 applications you don't do any check to determine whether</p> <p>12 the applicant has any outstanding arrest warrants; is</p> <p>13 that correct?</p> <p>14 <b>A. That is correct.</b></p> <p>15 Q. Is the Secretary of State's Office aware of any</p> <p>16 public perception that if you go to a driver license</p> <p>17 office a warrant check will be conducted while you're</p> <p>18 there?</p> <p>19 <b>A. I have no idea.</b></p> <p>20 Q. Are state troopers or law enforcement generally</p> <p>21 present at driver license offices?</p> <p>22 <b>A. Yes, they are.</b></p> <p>23 Q. Are you aware -- is the Secretary of State's</p> <p>24 Office aware of any concerns about the presence of law</p> <p>25 enforcement at driver license offices?</p>



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12 (Pages 45 to 48)

<p style="text-align: right;">45</p> <p>1 <b>A. No, ma'am.</b></p> <p>2 Q. Is there any law enforcement at polling places</p> <p>3 on election day?</p> <p>4 <b>A. Well, there can be, but usually not.</b></p> <p>5 Q. And why is that?</p> <p>6 <b>A. Not usually a need. If the election judge</b></p> <p>7 <b>feels that there is a potential breach of the peace, then</b></p> <p>8 <b>they certainly can have a constable or a local law</b></p> <p>9 <b>official at the polling place, but normally there's not</b></p> <p>10 <b>a perceived threat to public order or safety that would</b></p> <p>11 <b>require the election judge to make that request of local</b></p> <p>12 <b>law enforcement.</b></p> <p>13 Q. And is it generally true that county election</p> <p>14 offices don't have law enforcement at polling places</p> <p>15 because it would be intimidating to voters?</p> <p>16 MR. KEISTER: Objection, calls for</p> <p>17 speculation.</p> <p>18 <b>A. Right. I don't believe that has anything to do</b></p> <p>19 <b>with it, no, ma'am.</b></p> <p>20 Q. Has the Secretary of State's Office played any</p> <p>21 role in the issuance of EICs?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. And describe that role.</p> <p>24 <b>A. We were a part of the program for the mobile</b></p> <p>25 <b>EIC units last fall, and then we have actually had</b></p>	<p style="text-align: right;">47</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. What has that role been?</p> <p>3 <b>A. There was what we call Phase 3 of the mobile</b></p> <p>4 <b>EIC unit program, and it involved permanent fixtures of</b></p> <p>5 <b>election identification certificate mobile units inside</b></p> <p>6 <b>counties that didn't have a permanent driver license</b></p> <p>7 <b>office, so I, for the Secretary of State's Office,</b></p> <p>8 <b>contacted those counties -- I don't remember how many</b></p> <p>9 <b>there were, 79 or 80 of them -- and talked to them about</b></p> <p>10 <b>the possibility of having the training, having the</b></p> <p>11 <b>equipment and the ability to issue election</b></p> <p>12 <b>identification certificates locally on a full-time basis.</b></p> <p>13 Q. Has that been executed or is that a plan?</p> <p>14 <b>A. It has been executed and it is currently in the</b></p> <p>15 <b>process of continuing to be executed. So there were some</b></p> <p>16 <b>counties who were very quick on deciding to take us up on</b></p> <p>17 <b>the offer, there were other counties who were more</b></p> <p>18 <b>reluctant, and so it's been a process.</b></p> <p>19 Q. What is the current status of how many counties</p> <p>20 without driver license offices have entered into this</p> <p>21 arrangement?</p> <p>22 <b>A. I am not sure. The last I heard it was 40 had</b></p> <p>23 <b>the ability to do EICs on a full-time basis locally. I'm</b></p> <p>24 <b>not sure of what the updated numbers are past that. I</b></p> <p>25 <b>believe that there were several more who had agreed to be</b></p>
<p style="text-align: right;">46</p> <p>1 <b>several of our employees trained to issue election</b></p> <p>2 <b>identification certificates, and in the spring campaign</b></p> <p>3 <b>before the March primary some of our agency employees</b></p> <p>4 <b>were out with the mobile units paired with a DPS person</b></p> <p>5 <b>and they did issue a couple or maybe three or four EICs.</b></p> <p>6 Q. Is there any other way in which the Secretary</p> <p>7 of State's Office has played a role in issuing EICs?</p> <p>8 <b>A. No, ma'am.</b></p> <p>9 Q. Did your office have any role in issuing EICs</p> <p>10 in October or September 2013?</p> <p>11 <b>A. We -- we had a role in trying to direct the</b></p> <p>12 <b>locations of the election identification certificate</b></p> <p>13 <b>mobile units, and so we coordinated very closely with DPS</b></p> <p>14 <b>in that process. But no, we didn't actually issue the</b></p> <p>15 <b>election identification certificates.</b></p> <p>16 Q. So you had no involvement in issuing EICs at</p> <p>17 driver license offices; is that correct?</p> <p>18 <b>A. That's correct.</b></p> <p>19 Q. You have no plans to be involved in issuing</p> <p>20 EICs at driver license offices; is that correct?</p> <p>21 <b>A. Our office has no such current plans. If the</b></p> <p>22 <b>legislature decides that we need to have a role, then we</b></p> <p>23 <b>will.</b></p> <p>24 Q. Fair point. Has your office played any role in</p> <p>25 working in other -- in county offices to issue EICs?</p>	<p style="text-align: right;">48</p> <p>1 <b>trained and accept the equipment. I just don't know what</b></p> <p>2 <b>the current status is.</b></p> <p>3 Q. Are those 40 currently operating offices that</p> <p>4 issue EICs or is this -- is your testimony that they've</p> <p>5 entered into an agreement to do that?</p> <p>6 <b>A. No, no, they -- they -- they -- they're up and</b></p> <p>7 <b>running, so if someone needs an election identification</b></p> <p>8 <b>certificate in those counties they can go to their</b></p> <p>9 <b>local -- it depends on the county which office has the</b></p> <p>10 <b>equipment. Sometimes the county judge's office has it,</b></p> <p>11 <b>sometimes it's the sheriff, sometimes it is the voter</b></p> <p>12 <b>registrar, and sometimes it's the county clerk, so it</b></p> <p>13 <b>depends on the county.</b></p> <p>14 Q. Okay. We'll talk a little bit about that</p> <p>15 Phase 3 later, after we talk about earlier phases.</p> <p>16 Are you aware that there have been changes</p> <p>17 to the rules related to the issuance of birth</p> <p>18 certificates to be used to obtain an EIC?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. Have you had any role or involvement or input</p> <p>21 in the changes to those rules?</p> <p>22 <b>A. No, ma'am.</b></p> <p>23 Q. Are you familiar with mobile EIC centers?</p> <p>24 <b>A. I'm not sure.</b></p> <p>25 Q. Units?</p>

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13 (Pages 49 to 52)

<p style="text-align: right;">49</p> <p>1 <b>A. Yes.</b></p> <p>2 <b>Q. What are those?</b></p> <p>3 <b>A. It is equipment that can be transported from</b></p> <p>4 <b>location to location that has within it the ability to</b></p> <p>5 <b>take the person's information, scan it in and issue a</b></p> <p>6 <b>temporary form of an election identification certificate.</b></p> <p>7 <b>Q. What prompted development of mobile EIC units?</b></p> <p>8 <b>MR. KEISTER: Mr. Ingram, to the extent</b></p> <p>9 <b>that calls for any deliberations within the office, I'm</b></p> <p>10 <b>going to instruct you not to answer that. To the extent</b></p> <p>11 <b>it's simply telling what the office does, then you can go</b></p> <p>12 <b>into that.</b></p> <p>13 <b>A. Yeah, then I don't know if I can answer that</b></p> <p>14 <b>question.</b></p> <p>15 <b>Q. When did the beginning of the program start?</b></p> <p>16 <b>A. It actually started with mobile EIC units in</b></p> <p>17 <b>place sometime around the 15th or 20th of September. I'm</b></p> <p>18 <b>not sure exactly the kickoff date.</b></p> <p>19 <b>Q. When did the plans for the units start?</b></p> <p>20 <b>A. It would have been June and July of 2013.</b></p> <p>21 <b>Q. Who was involved in developing the plans?</b></p> <p>22 <b>A. Our office, the Governor's Office, the</b></p> <p>23 <b>Department of Public Safety.</b></p> <p>24 <b>Q. Who at the Governor's Office was involved?</b></p> <p>25 <b>A. I am not sure who all was involved. There's a</b></p>	<p style="text-align: right;">51</p> <p>1 that that's concerning deliberations in your office about</p> <p>2 what ultimately resulted in the mobile EICs, I'm going to</p> <p>3 instruct you not to answer that.</p> <p>4 <b>A. I guess I can't answer.</b></p> <p>5 <b>Q. You had the list of voters who didn't have</b></p> <p>6 <b>state-issued IDs in July 2013, correct?</b></p> <p>7 <b>A. No, ma'am, I did not.</b></p> <p>8 <b>Q. You had testified earlier in this deposition</b></p> <p>9 <b>that you had conducted a match of TEAM with the jury</b></p> <p>10 <b>wheel list, correct?</b></p> <p>11 <b>A. That we matched TEAM with the DPS database used</b></p> <p>12 <b>for jury wheel, yes, ma'am.</b></p> <p>13 <b>Q. Correct. And you had a list of voters who did</b></p> <p>14 <b>not have state forms of -- who did not have a Texas</b></p> <p>15 <b>driver license or a personal ID.</b></p> <p>16 <b>A. No, ma'am, that is not what I testified.</b></p> <p>17 <b>Q. Could you clarify?</b></p> <p>18 <b>A. We did not have such a list. We've never had</b></p> <p>19 <b>such a list, and as far as I know such a list does not</b></p> <p>20 <b>exist.</b></p> <p>21 <b>Q. Can you testify as to your understanding of</b></p> <p>22 <b>what that matching list constituted and represented?</b></p> <p>23 <b>A. That list of persons were registered voters who</b></p> <p>24 <b>we could not prove had a state-issued ID, that we</b></p> <p>25 <b>couldn't match with a state-issued ID. That does not</b></p>
<p style="text-align: right;">50</p> <p>1 <b>deputy chief of staff. I can't think of his name to save</b></p> <p>2 <b>my life right now. But anyway, he -- he was the primary</b></p> <p>3 <b>point person for the Governor's Office on it.</b></p> <p>4 <b>Q. Were you the point person for the Secretary of</b></p> <p>5 <b>State's Office?</b></p> <p>6 <b>A. I along with our general counsel and our</b></p> <p>7 <b>deputy.</b></p> <p>8 <b>Q. And who was the point of contact at DPS?</b></p> <p>9 <b>A. Duke Bodisch and Joe Peters.</b></p> <p>10 <b>Q. Were there other means of reaching registered</b></p> <p>11 <b>and eligible voters who lacked EICs that you considered?</b></p> <p>12 <b>A. One of the things that we had talked about was</b></p> <p>13 <b>Saturday hours at some of the higher traffic DPS offices.</b></p> <p>14 <b>Q. Were there any other avenues of reaching voters</b></p> <p>15 <b>without EICs that you contemplated?</b></p> <p>16 <b>MR. KEISTER: Mr. Ingram, to the extent</b></p> <p>17 <b>that's going into the deliberations of the office I'm</b></p> <p>18 <b>going to instruct you not to answer that, and also to the</b></p> <p>19 <b>extent that it invades the attorney-client privilege I'm</b></p> <p>20 <b>going to instruct you not to answer that.</b></p> <p>21 <b>Q. And I'm certainly not asking you about any</b></p> <p>22 <b>conversations you've had with your attorneys, but were</b></p> <p>23 <b>there other means or avenues of reaching voters that you</b></p> <p>24 <b>contemplated?</b></p> <p>25 <b>MR. KEISTER: Once again, to the extent</b></p>	<p style="text-align: right;">52</p> <p>1 <b>mean that they did not have one, and in fact, we believe</b></p> <p>2 <b>most of them do have one, we just didn't have the</b></p> <p>3 <b>necessary information to show it.</b></p> <p>4 <b>Q. What was the basis of your belief that most of</b></p> <p>5 <b>them had the state forms of ID?</b></p> <p>6 <b>A. Because it's our understanding that most people</b></p> <p>7 <b>have a state-issued ID of some sort or another.</b></p> <p>8 <b>Q. But for some reason they were not in the DPS</b></p> <p>9 <b>driver license database?</b></p> <p>10 <b>A. No, ma'am. They didn't match with a person in</b></p> <p>11 <b>the DPS driver license database.</b></p> <p>12 <b>Q. So it's your testimony that it was a matching</b></p> <p>13 <b>problem, but that the 795,000 or 785,000 people you just</b></p> <p>14 <b>testified about likely, because of matching issues,</b></p> <p>15 <b>actually had state forms of ID; is that correct?</b></p> <p>16 <b>A. That's right.</b></p> <p>17 <b>Q. And it's because the matching that you</b></p> <p>18 <b>conducted was somehow flawed; is that correct?</b></p> <p>19 <b>A. The information that we use for matching</b></p> <p>20 <b>purposes has within it deficiencies, so what we have</b></p> <p>21 <b>associated with a registered voter are certain bits of</b></p> <p>22 <b>information. What the driver license database has</b></p> <p>23 <b>associated with a particular driver or state ID holder</b></p> <p>24 <b>are certain bits of information. Making those bits of</b></p> <p>25 <b>information match so that you feel comfortable it's the</b></p>

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15 (Pages 57 to 60)

<p style="text-align: right;">57</p> <p>1 A. The head of this particular division is</p> <p>2 Elizabeth Kirkwood, but I don't know which of the guys</p> <p>3 actually did it.</p> <p>4 Q. Did you consider robocalling voters on this</p> <p>5 list that you prepared in July 2013 to let them know</p> <p>6 about SB 14 or the availability of EICs?</p> <p>7 A. No, ma'am.</p> <p>8 Q. Why did you not consider that?</p> <p>9 MR. KEISTER: And by you, you're referring</p> <p>10 to the office?</p> <p>11 Q. The office.</p> <p>12 A. The Office of the Secretary of State doesn't</p> <p>13 have their phone number and we don't have the resources</p> <p>14 or the ability to contact the voters, and they're not our</p> <p>15 voters, they're the counties' voters, and every single</p> <p>16 voter in the state received, in 2011, a voter</p> <p>17 registration card with a list of photo ID requirements</p> <p>18 that would be in effect if preclearance happened and then</p> <p>19 they got a voter registration card -- every single voter</p> <p>20 in the state got a card at the end of 2013 with a list of</p> <p>21 photo ID requirements. So every voter has been contacted</p> <p>22 with regard to the need for a photo ID at the polling</p> <p>23 place.</p> <p>24 Q. The voter registration card was reissued in</p> <p>25 '13?</p>	<p style="text-align: right;">59</p> <p>1 A. It is a Memorandum of Understanding between our</p> <p>2 office and the Department of Public Safety.</p> <p>3 Q. When did your office and DPS enter into this</p> <p>4 agreement?</p> <p>5 A. It shows to be October 8th of 2013.</p> <p>6 Q. Why did you enter into this agreement?</p> <p>7 A. To have a record of -- of -- of what our</p> <p>8 offices had agreed to do jointly with regard to election</p> <p>9 identification certificate mobile units.</p> <p>10 Q. Does it remain in effect today?</p> <p>11 A. Yes, ma'am.</p> <p>12 Q. Are you aware of any law or regulation</p> <p>13 requiring the Secretary of State's Office and DPS to</p> <p>14 enter into this memorandum?</p> <p>15 A. No, ma'am.</p> <p>16 Q. Are you aware of any law requiring the</p> <p>17 Secretary of State or DPS to offer mobile EIC units, make</p> <p>18 them available to voters?</p> <p>19 A. No, ma'am.</p> <p>20 Q. Could the Secretary of State and DPS terminate</p> <p>21 this agreement at any time?</p> <p>22 A. I don't know. I don't know what it says. I</p> <p>23 guess.</p> <p>24 MR. KEISTER: Don't guess.</p> <p>25 A. Yeah, I don't know.</p>
<p style="text-align: right;">58</p> <p>1 A. Yes.</p> <p>2 Q. So I believe you testified that mobile EIC</p> <p>3 units were in operation in advance of November 2013. Is</p> <p>4 that correct?</p> <p>5 A. That's correct.</p> <p>6 Q. And you testified a bit about your involvement</p> <p>7 in that program.</p> <p>8 A. Right.</p> <p>9 Q. And the involvement was providing the equipment</p> <p>10 for the units?</p> <p>11 A. We bought the equipment and we interfaced with</p> <p>12 the counties about locations to put the units, and that</p> <p>13 was my job.</p> <p>14 Q. And DPS was involved in what capacity?</p> <p>15 A. DPS made sure that the locations that were</p> <p>16 proposed by the county election officials were sufficient</p> <p>17 for the purpose and made sure that the equipment and the</p> <p>18 personnel to run the equipment were on the location on</p> <p>19 the dates needed.</p> <p>20 MS. WESTFALL: Could you mark this as 4.</p> <p>21 (Exhibit No. 4 marked)</p> <p>22 Q. I've handed you what's been marked as</p> <p>23 Exhibit 4. Do you recognize this document?</p> <p>24 A. Yes, ma'am.</p> <p>25 Q. What is it?</p>	<p style="text-align: right;">60</p> <p>1 Q. Turning your attention to page 3, at VII,</p> <p>2 Duration of Partnership, and on page -- continuing on to</p> <p>3 page 4, do you see that it is effective on the date it's</p> <p>4 executed and can terminate on written agreement of the</p> <p>5 parties?</p> <p>6 A. Right.</p> <p>7 Q. So is it your understanding that DPS and the</p> <p>8 Secretary of State's Office could terminate this</p> <p>9 agreement upon written agreement?</p> <p>10 A. I guess we could. We certainly have no plans</p> <p>11 to do so.</p> <p>12 Q. Is the future of mobile EI -- the EIC program</p> <p>13 at the discretion of the Secretary of State and DPS?</p> <p>14 A. And probably from input from the Governor's</p> <p>15 Office, but yes.</p> <p>16 Q. Did the Governor's Office play any role in this</p> <p>17 memorandum?</p> <p>18 A. I don't know what you mean by played any role</p> <p>19 They didn't sign it.</p> <p>20 Q. Did they participate in the development of the</p> <p>21 terms of this memorandum?</p> <p>22 A. I don't believe so. Not the actual terms,</p> <p>23 no, ma'am.</p> <p>24 Q. Did they participate in the development of the</p> <p>25 relationship between DPS and the Secretary of State's</p>

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16 (Pages 61 to 64)

<p style="text-align: right;">61</p> <p>1 Office to provide these units?</p> <p>2 MR. KEISTER: Mr. Ingram, to the extent</p> <p>3 that goes into deliberative process I'm going to instruct</p> <p>4 you not to -- not to answer that question. You can give</p> <p>5 the ultimate answer as to what they did, but in terms of</p> <p>6 how things were discussed and developed underlying the</p> <p>7 final determination I'm going to instruct you not to</p> <p>8 answer, as well as based on attorney-client.</p> <p>9 MS. WESTFALL: Mr. Keister, I am asking</p> <p>10 whether an office was involved. I'm not asking the</p> <p>11 substance of the involvement, recommendations, or any</p> <p>12 deliberations prior to a decision. I'm asking for an</p> <p>13 identity of an office that was involved, yes or no, and</p> <p>14 I think that's appropriate even assuming that</p> <p>15 deliberative process privilege is appropriately asserted</p> <p>16 here, which -- which -- which I'm not conceding.</p> <p>17 MR. KEISTER: You can answer that</p> <p>18 question, but don't go into the underlying discussions.</p> <p>19 Q. Was the Governor's Office involved in the terms</p> <p>20 of the memorandum?</p> <p>21 A. I don't believe --</p> <p>22 Q. Or the concept?</p> <p>23 A. I don't know if they were involved in the</p> <p>24 memorandum. They were involved in the development of the</p> <p>25 mobile EIC program, you bet.</p>	<p style="text-align: right;">63</p> <p>1 A. Yes.</p> <p>2 Q. Can you think of anyone else by name of who was</p> <p>3 involved?</p> <p>4 A. Sure. The chief of staff, Cathy Walt, was also</p> <p>5 involved.</p> <p>6 Q. It's Walt, W-A-L-T?</p> <p>7 A. Yes.</p> <p>8 Q. Anyone else?</p> <p>9 A. No, ma'am.</p> <p>10 Q. During what periods of time have the units been</p> <p>11 in operation from the time it started until the present?</p> <p>12 A. Right. The -- the -- it kind of depends on</p> <p>13 what phase you're talking about. Phase 2 units were in</p> <p>14 operation from middle of September until the week after</p> <p>15 election day, so I believe that would be through</p> <p>16 November 12th or so, and then they were put back into</p> <p>17 service in January of this year through March, and we</p> <p>18 actually, I believe, have restarted the program now</p> <p>19 building into the November election.</p> <p>20 Q. So what was Phase 1 of the mobile EIC unit</p> <p>21 program?</p> <p>22 A. I don't know. I think that Phase 1, there</p> <p>23 were -- there was initially an idea that there were some</p> <p>24 complex pieces of equipment on trailers, and I think that</p> <p>25 might be what the DPS refers to as Phase 1, but we didn't</p>
<p style="text-align: right;">62</p> <p>1 Q. Who was the person in the Governor's Office who</p> <p>2 was involved?</p> <p>3 A. I can't remember his --</p> <p>4 Q. Could you identify the title of the person in</p> <p>5 the Governor's Office involved?</p> <p>6 A. He's the deputy chief of staff, and I swear</p> <p>7 he's going to kill me if I can't remember his name, but</p> <p>8 I'm just drawing a blank.</p> <p>9 Q. If you remember at a break will you tell me a</p> <p>10 little bit later in the deposition?</p> <p>11 A. Certainly.</p> <p>12 Q. When was the Governor's Office involved in the</p> <p>13 development of the mobile EIC units?</p> <p>14 A. All the way, stem to stern, beginning to end,</p> <p>15 alpha and omega.</p> <p>16 Q. What time period was the office involved?</p> <p>17 A. I am not sure. It would have been sometime in</p> <p>18 July until it was underway.</p> <p>19 Q. Was anyone from the Lieutenant Governor's</p> <p>20 Office involved in the development of the mobile EIC unit</p> <p>21 program?</p> <p>22 A. No. They, I believe --</p> <p>23 MR. KEISTER: Just answer the question.</p> <p>24 Q. Was there more than one person involved at the</p> <p>25 Governor's Office in developing this program?</p>	<p style="text-align: right;">64</p> <p>1 ever use those.</p> <p>2 Q. Turn back to Exhibit 4. Do you see that it</p> <p>3 provides for 25 such units?</p> <p>4 A. Yes.</p> <p>5 Q. How was the decision made to provide 25 units?</p> <p>6 MR. KEISTER: Mr. Ingram, to the extent</p> <p>7 that calls for deliberative process, I'm going to give</p> <p>8 you the same instruction not to -- not to go into the</p> <p>9 underlying deliberations. To the extent that you can</p> <p>10 give the ultimate results, you're welcome to do so.</p> <p>11 A. I guess I can't answer.</p> <p>12 MR. BARON: Just for the record -- I've</p> <p>13 been quiet for like over an hour, which is a personal</p> <p>14 record. But it seems like we're entitled to know what</p> <p>15 they did and what they didn't do. I understand your</p> <p>16 objection to what went on behind the scenes in terms of</p> <p>17 why, but a lot of these questions, particularly the ones</p> <p>18 asking him what they did, don't seem to completely</p> <p>19 involve the deliberative process to me, Ronny, just as</p> <p>20 a general comment.</p> <p>21 MR. KEISTER: And I'm trying to walk that</p> <p>22 line and instruct him to answer as to what they did, but</p> <p>23 not to go into deliberations. I'm trying to do it as</p> <p>24 surgically as possible.</p> <p>25 MR. BARON: All right.</p>

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17 (Pages 65 to 68)

<p style="text-align: right;">65</p> <p>1 BY MS. WESTFALL:</p> <p>2 Q. Mr. Ingram, you could have provided 35 units,</p> <p>3 correct?</p> <p>4 A. Well, obviously we have resource constraints.</p> <p>5 This is -- we're having to move money from other places</p> <p>6 in our budget to pay for this, and so there was</p> <p>7 definitely an upper limit. So the goal is to have as</p> <p>8 many units as would be useful for accomplishing the</p> <p>9 purpose within the available resources.</p> <p>10 Q. Was 25 the upper limit or were there more that</p> <p>11 you could have done that you decided not to do?</p> <p>12 A. Well, as it turned out, not. They were not --</p> <p>13 it was not against the upper limit. As initially</p> <p>14 proposed from DPS it was very much the upper limit. So</p> <p>15 the configuration of the mobile units changed in a way</p> <p>16 that made them cheaper, so -- and at that point we had 25</p> <p>17 committed.</p> <p>18 Q. I see. So you could have -- you could have</p> <p>19 done more. You had more budget because you did it</p> <p>20 cheaper than expected; is that correct?</p> <p>21 A. Well, there's two pieces to this. There's the</p> <p>22 piece for the equipment that the Secretary of State was</p> <p>23 responsible for and then there's the piece for the</p> <p>24 personnel that DPS was going to be responsible for, and</p> <p>25 so 25 could well have been very much where they felt like</p>	<p style="text-align: right;">67</p> <p>1 to engage in that discussion.</p> <p>2 Q. Did you conduct any analyses of the number of</p> <p>3 mobile units needed to reach registered and eligible</p> <p>4 voters without state forms of ID?</p> <p>5 A. No, ma'am.</p> <p>6 Q. And why not?</p> <p>7 A. Because we're missing one of the variables in</p> <p>8 that equation.</p> <p>9 Q. Which is?</p> <p>10 A. The number of persons without an ID.</p> <p>11 Q. So is it your testimony that 25 was kind of</p> <p>12 somewhat of an arbitrary number of units?</p> <p>13 A. I don't think it was arbitrary. I think that</p> <p>14 25 was believed to be sufficient to have pretty good</p> <p>15 coverage across the state in the time period that was</p> <p>16 before the election.</p> <p>17 Q. And by coverage across the state what do you</p> <p>18 mean?</p> <p>19 A. I mean coverage across the state.</p> <p>20 Q. In particular counties or areas of the state or</p> <p>21 across the entire state?</p> <p>22 A. In the areas that we felt like would be</p> <p>23 beneficial -- that it would be beneficial to have these.</p> <p>24 Like I said before, there were two primary drivers of</p> <p>25 where the mobile EIC units would go. Number one, we</p>
<p style="text-align: right;">66</p> <p>1 they could go.</p> <p>2 Q. For your original budget, correct?</p> <p>3 A. Right.</p> <p>4 Q. And then you were able to do it less</p> <p>5 expensively, and you could have done more, but you</p> <p>6 didn't. Is that your testimony?</p> <p>7 A. No, ma'am. No, ma'am. I'm saying that as far</p> <p>8 as the Secretary of State on the equipment piece, we</p> <p>9 could have done a few more, but I don't know if DPS could</p> <p>10 have serviced more in an effective way.</p> <p>11 Q. Did you offer DPS the additional units and they</p> <p>12 declined because of the cost of personnel?</p> <p>13 A. No, ma'am.</p> <p>14 Q. Did you let them know that you had additional</p> <p>15 units available or did you not communicate that to DPS?</p> <p>16 A. We didn't have additional units available.</p> <p>17 Q. But you had budget for additional units; is</p> <p>18 that correct?</p> <p>19 A. We didn't have budget for any of this.</p> <p>20 Q. Was it your testimony you had capacity to do</p> <p>21 more than 25?</p> <p>22 A. We could conceivably have done more than 25.</p> <p>23 We did not feel that more than 25 was necessary, and I</p> <p>24 don't know if that would have been up against DPS'</p> <p>25 resource constraints or not because it wasn't necessary</p>	<p style="text-align: right;">68</p> <p>1 wanted to make sure that rural voters had access at a</p> <p>2 fairly close distance, so we wanted to spread them out in</p> <p>3 the rural parts of Texas, and we had ZIP codes where we</p> <p>4 had significant numbers of non-matches that we wanted to</p> <p>5 target. So the combination of those two purposes, we</p> <p>6 felt like 25 was sufficient to cover it.</p> <p>7 Q. The basis of your understanding as to where</p> <p>8 there were large concentrations of voters without ID was</p> <p>9 based on your list or based on -- based on what?</p> <p>10 A. I did not have an understanding that there were</p> <p>11 large concentrations of voters without an ID. I had an</p> <p>12 understanding that there -- we had an understanding that</p> <p>13 there were large concentrations of voters that didn't</p> <p>14 match with an ID.</p> <p>15 Q. And that was the basis of where you came up</p> <p>16 with the 25?</p> <p>17 A. No, ma'am.</p> <p>18 Q. What is your testimony on this?</p> <p>19 A. That there were two primary drivers for where</p> <p>20 the mobile election identification certificate units</p> <p>21 would go. Number one, we wanted to have sufficient to</p> <p>22 reach that crescent of Texas from El Paso down to</p> <p>23 Cameron County where it's very rural and up in the</p> <p>24 Panhandle where it's very rural. We wanted to make sure</p> <p>25 that we had some representation in those counties where</p>



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18 (Pages 69 to 72)

<p style="text-align: right;">69</p> <p>1 rural voters live. The other consideration was we wanted</p> <p>2 to make sure that where we had identified non-matches by</p> <p>3 ZIP code, that there were EIC units in reasonably close</p> <p>4 proximity to those ZIP codes sometime before the</p> <p>5 election.</p> <p>6 Q. I see. And the ZIP code analysis was based on</p> <p>7 your July 2013 matching process; is that correct?</p> <p>8 A. That's correct.</p> <p>9 Q. And your concern about rural voters along the</p> <p>10 border of Mexico, is that -- were you concerned about</p> <p>11 counties without existing driver license offices or were</p> <p>12 you just concerned about the driving distance in those</p> <p>13 counties or both?</p> <p>14 MR. KEISTER: Object that that</p> <p>15 mischaracterized the previous testimony.</p> <p>16 A. Yeah. The goal was to make sure that those</p> <p>17 very large counties along the border had the availability</p> <p>18 of EIC units, you know, sprinkled around.</p> <p>19 Q. Did the Secretary of State's Office determine</p> <p>20 the particular locations within each county in which to</p> <p>21 locate a mobile EIC unit?</p> <p>22 A. It was a collaborative effort between the</p> <p>23 county, our office, and DPS.</p> <p>24 Q. How did that -- how did that work?</p> <p>25 A. I would call the county election official,</p>	<p style="text-align: right;">71</p> <p>1 where to locate these units besides the July 2013 list?</p> <p>2 A. No, ma'am.</p> <p>3 Q. And when you were consulting the July 2013 list,</p> <p>4 did you rely upon that information for any other</p> <p>5 decisions about mobile EIC units besides the location?</p> <p>6 A. No, ma'am.</p> <p>7 Q. In other words, you didn't rely upon that list</p> <p>8 to determine the hours of operation, the days of</p> <p>9 operation, et cetera?</p> <p>10 A. No, ma'am.</p> <p>11 Q. And did you rely upon the July 2013 list to</p> <p>12 determine the total number of mobile EIC units?</p> <p>13 A. No, ma'am.</p> <p>14 Q. Who in your office consulted the list to</p> <p>15 determine the locations of mobile EIC units?</p> <p>16 A. Myself, our general counsel, Mr. Jackson, and</p> <p>17 deputy secretary of state.</p> <p>18 Q. Mr. Shorter?</p> <p>19 A. Mr. Shorter.</p> <p>20 Q. Anyone else?</p> <p>21 A. I don't believe so.</p> <p>22 Q. Did you rerun this jury wheel DPS list against</p> <p>23 TEAM for the purposes of locating EIC mobile units in</p> <p>24 advance of the March 2014 election?</p> <p>25 A. No, ma'am.</p>
<p style="text-align: right;">70</p> <p>1 usually the voter registrar, sometimes the county clerk,</p> <p>2 and if there was an election administrator I would call</p> <p>3 them, and ask them where they thought it would be useful</p> <p>4 to have an election identification certificate mobile</p> <p>5 unit. They would identify potential places. We would</p> <p>6 submit those to the Department of Public Safety.</p> <p>7 Department of Public Safety would vet them for</p> <p>8 sufficiency, and sometimes they would say that they are</p> <p>9 not sufficient and we need to find someplace else, and</p> <p>10 they would tell me and I would call the county and the</p> <p>11 county would find an alternate location.</p> <p>12 Q. So the communications were between your office</p> <p>13 and the county election officials; is that right?</p> <p>14 A. It was between me and the county election</p> <p>15 officials, yes, ma'am.</p> <p>16 Q. Okay. Great. And what was the split between</p> <p>17 coverage that you were providing in rural areas versus</p> <p>18 coverage with ZIP -- the ZIP codes with large</p> <p>19 concentrations of persons on this July 2013 list?</p> <p>20 A. I don't know. It was -- it was -- it varied,</p> <p>21 so sometimes we would have more in cities and less in the</p> <p>22 rural and sometimes we would have more in the rural and</p> <p>23 less in the cities, so it just -- it just depended on</p> <p>24 where they were that week.</p> <p>25 Q. Did you consult any other list to determine</p>	<p style="text-align: right;">72</p> <p>1 Q. Why did you not do that?</p> <p>2 A. Because it was not a useful tool.</p> <p>3 Q. And why is that?</p> <p>4 A. Because it did not result in any usage of the</p> <p>5 EIC program on the local basis.</p> <p>6 Q. Do you plan to rerun this matching process in</p> <p>7 advance of the November 2014 election?</p> <p>8 A. No, ma'am.</p> <p>9 Q. For the same reasons you just testified to?</p> <p>10 A. That's correct.</p> <p>11 Q. Turning back to October 2013, did any county</p> <p>12 request a mobile EIC unit in its county?</p> <p>13 A. Yes.</p> <p>14 Q. Which counties?</p> <p>15 A. I don't know if I remember.</p> <p>16 Q. Do you remember any?</p> <p>17 A. Yeah, there were several. I just don't</p> <p>18 remember off the top of my head who made specific</p> <p>19 requests. I know that Carolyn Guidry over in Jefferson</p> <p>20 County wanted to make sure that we came her direction.</p> <p>21 I'm pretty sure that Jacque Callanan down in</p> <p>22 Bexar County, she had a county commissioner or city</p> <p>23 council person that wanted one in his precinct or</p> <p>24 district. I don't know which it was. And so we had</p> <p>25 requests like that from several people, I just don't know</p>

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19 (Pages 73 to 76)

<p style="text-align: right;">73</p> <p>1 off the top of my head where they were.</p> <p>2 Q. How many counties would you say?</p> <p>3 A. I don't know.</p> <p>4 Q. Half a dozen? Dozen?</p> <p>5 A. Maybe.</p> <p>6 Q. Dozen?</p> <p>7 A. Maybe a dozen. Probably between half a dozen</p> <p>8 and a dozen.</p> <p>9 Q. Did you grant all those requests and locate</p> <p>10 mobile EIC units in those counties?</p> <p>11 A. Sure.</p> <p>12 Q. Were any denied?</p> <p>13 A. I don't think so.</p> <p>14 Q. Did you try to provide equal access -- other</p> <p>15 than what you've just testified that it's split between</p> <p>16 the rural and the concentrations of voters, did you try</p> <p>17 to provide equal access to mobile EIC units to all voters</p> <p>18 without a qualifying ID?</p> <p>19 A. Yes.</p> <p>20 Q. Did you make any particular efforts to locate</p> <p>21 the units in areas with high concentrations of minority</p> <p>22 voters?</p> <p>23 A. No. You know, we did want to make sure that</p> <p>24 Hidalgo and Cameron County were well represented, as well</p> <p>25 as El Paso, but that wasn't primarily because there are</p>	<p style="text-align: right;">75</p> <p>1 Q. Did you -- did your office suggest any</p> <p>2 locations that DPS rejected?</p> <p>3 A. Specific locations, yes.</p> <p>4 Q. Which were those locations?</p> <p>5 A. I think over in Liberty County there was a</p> <p>6 place that the local election administrator thought would</p> <p>7 be good that DPS didn't think was sufficient, and they</p> <p>8 ended up doing it at a place in the next block, stuff</p> <p>9 like that where a particular location, for whatever</p> <p>10 reason, didn't meet DPS' requirements and it would be</p> <p>11 moved to a different location in close proximity.</p> <p>12 Q. What was the basis of DPS' concern?</p> <p>13 A. I don't know.</p> <p>14 Q. Can you think of any other examples where DPS</p> <p>15 vetoed the decision about where to put a mobile unit?</p> <p>16 A. No, ma'am.</p> <p>17 Q. Just Liberty County?</p> <p>18 A. It was either Liberty or Hardin or Orange. It</p> <p>19 was one of those over there north of Jefferson County, in</p> <p>20 that area of Texas. I don't remember which one</p> <p>21 specifically it was. I believe it was Liberty, but it</p> <p>22 could have been Hardin and it could have been Orange.</p> <p>23 Q. Did you consider locating mobile EIC units</p> <p>24 close to early voting locations?</p> <p>25 A. As the early voting began that was one of the</p>
<p style="text-align: right;">74</p> <p>1 minorities there, it's because there were ZIP codes with</p> <p>2 significant numbers of non-matches. And so, you know, I</p> <p>3 don't know if we necessarily had in mind -- we wanted to</p> <p>4 make sure that -- in Houston at the Holman Street Baptist</p> <p>5 Church they had a mobile EIC unit almost the whole time</p> <p>6 before the November 2013 election, and there were two</p> <p>7 purposes for that. There was several ZIP codes in that</p> <p>8 area with -- with high concentrations of voters and the</p> <p>9 University of Houston was pretty close to it as well, so</p> <p>10 we were kind of killing two birds with one stone there.</p> <p>11 Q. But your testimony is you supplied the mobile</p> <p>12 EIC units uniformly across all voters without a state ID,</p> <p>13 to the best of your knowledge.</p> <p>14 MR. KEISTER: Object to form.</p> <p>15 A. I don't think that we -- that it's possible to</p> <p>16 do that because we don't know who doesn't have a state</p> <p>17 ID.</p> <p>18 Q. Did you make any particular efforts to target</p> <p>19 low income voters?</p> <p>20 A. I don't know. You know, I don't know if low</p> <p>21 income was specifically a requirement. We don't have any</p> <p>22 idea where low income is, but some of the places that we</p> <p>23 went probably would be characterized as low income</p> <p>24 places, rural Texas and some of the -- some of the ZIP</p> <p>25 codes inside the cities.</p>	<p style="text-align: right;">76</p> <p>1 things that I talked to county election officials about</p> <p>2 was saying it would be a good idea if you could have an</p> <p>3 EIC unit either in the same building as an early voting</p> <p>4 location or across the street from it, yes.</p> <p>5 Q. Did that happen?</p> <p>6 A. Yes.</p> <p>7 Q. In what counties?</p> <p>8 A. I don't know.</p> <p>9 Q. How many counties?</p> <p>10 A. Several.</p> <p>11 Q. Did it not happen in certain counties because</p> <p>12 it wasn't -- for whatever reason?</p> <p>13 A. No, I think all the places that we talked about</p> <p>14 it, it was -- that was their concern is the place where</p> <p>15 we would have this is close to the early voting, and I</p> <p>16 said that's good, that's useful. So no, I don't think</p> <p>17 that it didn't happen. You know, there was no resistance</p> <p>18 to the idea.</p> <p>19 Q. Was the mobile EIC unit in operation at the</p> <p>20 same time early voting was being conducted or different</p> <p>21 days?</p> <p>22 A. At the same time, in close proximity, once</p> <p>23 early voting began. Mobile units were in place before</p> <p>24 early voting began.</p> <p>25 Q. What were DPS' particular requirements for</p>

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20 (Pages 77 to 80)

<p style="text-align: right;">77</p> <p>1 location?</p> <p>2 <b>A. I don't know.</b></p> <p>3 Q. Do you know who at DPS would know?</p> <p>4 <b>A. I don't know for sure. Tony Rodriguez was the</b></p> <p>5 <b>one for DPS who was overseeing the operation, so maybe he</b></p> <p>6 <b>would know. Maybe it would be the regional people</b></p> <p>7 <b>underneath him. I don't know.</b></p> <p>8 Q. In any counties was there anything that</p> <p>9 prevented you from working with a county to locate a</p> <p>10 mobile EIC unit close to early voting?</p> <p>11 <b>A. No, ma'am.</b></p> <p>12 Q. Did you consider locating mobile EIC units in</p> <p>13 polling places on election day?</p> <p>14 <b>A. No, that was not considered.</b></p> <p>15 Q. Why did you not consider that?</p> <p>16 <b>A. Because we don't want anything extra at a</b></p> <p>17 <b>polling place.</b></p> <p>18 Q. And what do you mean by that?</p> <p>19 <b>A. I mean that polling places are for voting, not</b></p> <p>20 <b>for other stuff. Now, if a polling place has a room down</b></p> <p>21 <b>the hall from the polling place where an EIC unit could</b></p> <p>22 <b>go, that was definitely considered, but in the polling</b></p> <p>23 <b>location itself, no, ma'am.</b></p> <p>24 Q. What was the basis of your concern about having</p> <p>25 those two activities in the same room?</p>	<p style="text-align: right;">79</p> <p>1 Q. But are you aware of whether EIC issuance was</p> <p>2 available in the same building as polling places on</p> <p>3 election day in 2013?</p> <p>4 <b>A. I don't know on election day itself. Maybe, or</b></p> <p>5 <b>across the street or down the block, but they probably</b></p> <p>6 <b>were close.</b></p> <p>7 Q. Were EICs issued on election day in mobile EIC</p> <p>8 units at all?</p> <p>9 <b>A. I don't know.</b></p> <p>10 Q. <b>Did you consider whether to locate mobile EIC</b></p> <p>11 <b>units where they were accessible to public transit?</b></p> <p>12 <b>A. I don't know. You know, that would have been</b></p> <p>13 <b>a local county election official's decision on whether or</b></p> <p>14 <b>not to put one close to a bus stop or a train stop, and I</b></p> <p>15 <b>don't know if any of these places had that consideration</b></p> <p>16 <b>in mind.</b></p> <p>17 Q. Does the elections division conduct voter</p> <p>18 registration drives?</p> <p>19 <b>A. No, ma'am.</b></p> <p>20 Q. <b>Did you consider -- were any mobile EIC units</b></p> <p>21 <b>located in public schools or near public schools?</b></p> <p>22 <b>A. High schools?</b></p> <p>23 <b>Q. Yes.</b></p> <p>24 <b>A. I don't know.</b></p> <p>25 <b>Q. Were any located near -- near or in social</b></p>
<p style="text-align: right;">78</p> <p>1 <b>A. That we don't have anything besides voting</b></p> <p>2 <b>going on in polling places. That's -- that's the law.</b></p> <p>3 <b>That's what we do.</b></p> <p>4 Q. Is there a legal prohibition against issuing</p> <p>5 EICs in the same room?</p> <p>6 <b>A. Yes, 61.001 of the Election Code.</b></p> <p>7 Q. Nothing else can occur in that room?</p> <p>8 <b>A. Nobody else can be in that room unless they're</b></p> <p>9 <b>a worker or voting.</b></p> <p>10 Q. In October 2013 or September --</p> <p>11 MS. WESTFALL: Strike that.</p> <p>12 Q. In -- on election day, November 5, 2013, did</p> <p>13 you have EICs being issued in the same building as a</p> <p>14 polling place in any county across the state?</p> <p>15 <b>A. Sure.</b></p> <p>16 Q. What county?</p> <p>17 <b>A. I don't know. I'd have to go back and look and</b></p> <p>18 <b>see where they were and when they were. But yeah, that</b></p> <p>19 <b>was a common occurrence.</b></p> <p>20 Q. Are you certain that there were EICs issued on</p> <p>21 election day?</p> <p>22 <b>A. Oh, issued. I'm sorry. I didn't hear the</b></p> <p>23 <b>question well. I don't know if there were any EICs</b></p> <p>24 <b>issued at all, period, through this whole program. That</b></p> <p>25 <b>would be a DPS question.</b></p>	<p style="text-align: right;">80</p> <p>1 <b>services offices?</b></p> <p>2 <b>A. I think so, yes, ma'am.</b></p> <p>3 <b>Q. In what counties?</b></p> <p>4 <b>A. I don't know for sure. You'd have to ask the</b></p> <p>5 <b>county election officials how close the proximity was.</b></p> <p>6 <b>But, you know, this one that I'm talking about over in</b></p> <p>7 <b>Liberty or Orange or Hardin, wherever it was, was close</b></p> <p>8 <b>to a benefit office. But anyway, that happened all over.</b></p> <p>9 <b>The government offices are usually clustered together.</b></p> <p>10 Q. <b>Turn your attention back to Exhibit 4, Section</b></p> <p>11 <b>IV. Do you see that under the list of equipment on</b></p> <p>12 <b>page 2 of this exhibit it lists -- it states that SOS</b></p> <p>13 <b>will notify DPS in writing of the final location at least</b></p> <p>14 <b>two full business days in advance of the start date of</b></p> <p>15 <b>operations?</b></p> <p>16 <b>A. That's right.</b></p> <p>17 Q. <b>Why was there only two days advanced notice of</b></p> <p>18 <b>the location of the operation?</b></p> <p>19 <b>A. We tried, obviously, to have more notice than</b></p> <p>20 <b>that, but that was the minimum amount of notice that DPS</b></p> <p>21 <b>could operate within.</b></p> <p>22 Q. <b>Did you feel that that was adequate notice?</b></p> <p>23 <b>A. Adequate notice for who?</b></p> <p>24 <b>Q. DPS.</b></p> <p>25 <b>A. I don't know if it was adequate notice for DPS</b></p>

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21 (Pages 81 to 84)

<p style="text-align: right;">81</p> <p>1 or not. We generally gave them more notice than that.</p> <p>2 So I don't know.</p> <p>3 Q. Do you think two days notice of where a</p> <p>4 location will be would be adequate notice for voters or</p> <p>5 for county officials?</p> <p>6 A. I don't know. Adequate notice for what?</p> <p>7 Q. To provide notice to voters about the</p> <p>8 availability of these services.</p> <p>9 A. Well, like I said, we generally gave more</p> <p>10 notice than that. This was the minimum that DPS</p> <p>11 required. This doesn't have anything to do with notice</p> <p>12 to the public of the location.</p> <p>13 Q. But do you think two days is adequate notice to</p> <p>14 DPS?</p> <p>15 MR. KEISTER: Object.</p> <p>16 A. They agreed to it. I don't know.</p> <p>17 Q. Did the Secretary of State's Office have any</p> <p>18 concern that providing two days notice would not allow</p> <p>19 sufficient time to provide notice to voters about the</p> <p>20 availability of the EICs?</p> <p>21 A. The two-day notice requirement doesn't have</p> <p>22 anything to do with notice to voters.</p> <p>23 Q. If voters -- explain that.</p> <p>24 A. That we endeavored to give as much notice as we</p> <p>25 could give so that the county and us and DPS had a final</p>	<p style="text-align: right;">83</p> <p>1 was always more than two days?</p> <p>2 A. No, ma'am.</p> <p>3 Q. Sometimes it was two days?</p> <p>4 A. Probably.</p> <p>5 Q. Do you recall what counties in which it was</p> <p>6 only two days notice?</p> <p>7 A. I have no idea.</p> <p>8 Q. Which agencies or entities actually staffed the</p> <p>9 mobile EIC units?</p> <p>10 A. The DPS.</p> <p>11 Q. Did the DPS contract with county -- county</p> <p>12 employees to staff those units or was it actually DPS</p> <p>13 employees in all of these units?</p> <p>14 A. If we're talking about the 25 mobile EIC units,</p> <p>15 it was DPS staffed. If we're talking about the Phase 3</p> <p>16 units for permanent county placement, then it's a mixture</p> <p>17 of county and DPS.</p> <p>18 MR. KEISTER: Elizabeth, when you get to</p> <p>19 a good spot could we consider a break?</p> <p>20 MS. WESTFALL: Oh, yeah. Do you want to</p> <p>21 take one right now?</p> <p>22 MR. KEISTER: Are you ready?</p> <p>23 MS. WESTFALL: Sure, we can go on break.</p> <p>24 Let's go off the record.</p> <p>25 (Recess from 10:28 a.m. to 10:46 a.m.)</p>
<p style="text-align: right;">82</p> <p>1 location. We preferred a week. We preferred two weeks,</p> <p>2 but sometimes it wasn't possible. The minimum notice</p> <p>3 that DPS required in order to make a functioning EIC unit</p> <p>4 at a place was two days. I don't know of very many</p> <p>5 instances where it came down to two days. Obviously the</p> <p>6 goal was to have as much advanced notice as possible,</p> <p>7 especially in rural areas where the newspaper comes out</p> <p>8 once every two weeks. So yes, if it was too late to get</p> <p>9 into the newspaper for a rural area, then the local</p> <p>10 election official was on the radio and whatever local</p> <p>11 television news they could get. There were stories all</p> <p>12 over the state trying to get the word out to the public,</p> <p>13 so sometimes there was more time to get word out to the</p> <p>14 public, sometimes there wasn't as much time, but usually</p> <p>15 the places where it was less time for notice to the</p> <p>16 public were during early voting, and the primary goal of</p> <p>17 those places was if somebody showed up without an ID, to</p> <p>18 send them down the road, and there's not as much need for</p> <p>19 notice to the general public for those places.</p> <p>20 Q. So what was the least amount of notice that you</p> <p>21 can recall providing DPS?</p> <p>22 A. I don't know.</p> <p>23 Q. Was it five days? four days?</p> <p>24 A. I don't know.</p> <p>25 Q. But it was -- it was -- is it your testimony it</p>	<p style="text-align: right;">84</p> <p>1 (Exhibit No. 5 marked)</p> <p>2 BY MS. WESTFALL:</p> <p>3 Q. Mr. Ingram, I'm handing you what's been marked</p> <p>4 as Exhibit 5. Do you recognize this document?</p> <p>5 A. Yes.</p> <p>6 Q. What is it?</p> <p>7 A. It is the proposed agreement between DPS and</p> <p>8 counties who are going to issue EICs locally.</p> <p>9 Q. It allows, but does not require, counties to</p> <p>10 perform certain processing services of EIC applicants; is</p> <p>11 that right?</p> <p>12 A. I'm not sure what you mean.</p> <p>13 Q. In other words, counties can voluntarily enter</p> <p>14 into this agreement; is that correct?</p> <p>15 A. That's right.</p> <p>16 Q. Counties can determine if they want to</p> <p>17 participate; is that right?</p> <p>18 A. They can.</p> <p>19 Q. Are you aware of any legal obligation of any</p> <p>20 county to participate in this program?</p> <p>21 A. No, ma'am.</p> <p>22 Q. And counties -- this Exhibit 5, the Interlocal</p> <p>23 Cooperation Contract, indicates that counties can set the</p> <p>24 hours of operation; is that correct?</p> <p>25 A. That's correct.</p>

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22 (Pages 85 to 88)

<p style="text-align: right;">85</p> <p>1 Q. Did any counties sign this contract?</p> <p>2 A. I don't know for sure.</p> <p>3 Q. Were you involved in the process of reaching</p> <p>4 agreement between counties and DPS on this contract?</p> <p>5 A. Yes.</p> <p>6 Q. Was this contract used for the mobile EIC unit</p> <p>7 program in September and October 2013?</p> <p>8 A. It did not -- this is not something that would</p> <p>9 be used with regard to the 25 mobile EIC units under</p> <p>10 Phase 2. This is a Phase 3 document.</p> <p>11 Q. Could you describe what this contract pertains</p> <p>12 to with regard to Phase 3?</p> <p>13 A. It is the agreement under which DPS would</p> <p>14 provide the equipment to the counties as well as the</p> <p>15 training for them to issue EICs on a local basis and on</p> <p>16 a continuing basis.</p> <p>17 Q. Was this in effect for February 2013?</p> <p>18 A. I'm not sure what you mean.</p> <p>19 Q. Was this contract -- I'm sorry.</p> <p>20 MS. WESTFALL: Strike that.</p> <p>21 Q. Did counties staff the mobile EIC units and</p> <p>22 provide employees in 2014?</p> <p>23 A. Well, I don't know for sure. It's my</p> <p>24 understanding that we've got as many as 40 counties, and</p> <p>25 probably more than that now, who have signed this</p>	<p style="text-align: right;">87</p> <p>1 A. I believe it's more than 40 now. I don't know</p> <p>2 how many more than 40. I don't have current data.</p> <p>3 Q. When did this contract get underway with the</p> <p>4 counties?</p> <p>5 A. It was -- it was something that came along</p> <p>6 after we had begun the Phase 2 units, but pretty closely</p> <p>7 in proximity thereto, so I would say October of 2013 this</p> <p>8 was of primary focus.</p> <p>9 Q. So after October DPS started the process of</p> <p>10 entering into these agreements with counties?</p> <p>11 A. No, ma'am. During October they would have</p> <p>12 started this process.</p> <p>13 Q. But the counties -- when was the earliest that</p> <p>14 the counties started issuing EICs under this contract?</p> <p>15 A. I can't say for certain, but it would have been</p> <p>16 in October of 2013. I just don't know if it would have</p> <p>17 been the first week or the middle or maybe the third</p> <p>18 week, but it would have been in October of 2013 that</p> <p>19 the -- the early adopters would have started.</p> <p>20 Q. I see. And so prior to the November 2014</p> <p>21 election it was a mix of DPS employees and county</p> <p>22 employees that were staffing the mobile EIC units? I</p> <p>23 mean, it was -- it varied by office? Is that your</p> <p>24 testimony?</p> <p>25 A. It varied by program. So for the -- for the</p>
<p style="text-align: right;">86</p> <p>1 agreement who are issuing EICs or are able to issue EICs</p> <p>2 currently, and I don't know how many counties joined,</p> <p>3 officially, the program over time, but I -- I just --</p> <p>4 there were counties who had the equipment who had signed</p> <p>5 the agreement who were issuing EICs in February of 2014,</p> <p>6 yes, ma'am.</p> <p>7 Q. Who would know the most about the status of the</p> <p>8 Interlocal Cooperation Contracts?</p> <p>9 A. Over at the Department of Public Safety.</p> <p>10 Q. Who in particular at DPS would know about this?</p> <p>11 A. I don't know for sure. Probably Joe Peters</p> <p>12 would know, and I would imagine Tony Rodriguez would know</p> <p>13 as well, probably not as much as Joe.</p> <p>14 Q. So Mr. Peters was the primary point of contact</p> <p>15 for these contracts?</p> <p>16 A. He's the one that's in charge of the division</p> <p>17 that does this program, or the deputy chief. I'm not</p> <p>18 sure what his exact title is, but he's the operations</p> <p>19 hands-on guy.</p> <p>20 Q. Do you know whether of the -- I think it was 79</p> <p>21 counties that you testified about that don't have driver</p> <p>22 license offices.</p> <p>23 A. Right.</p> <p>24 Q. And you just testified about 40 of them have</p> <p>25 agreed to participate in this program; is that correct?</p>	<p style="text-align: right;">88</p> <p>1 counties who had undergone the training, who had accepted</p> <p>2 the equipment from the state, they were issuing the EICs.</p> <p>3 The DPS would pick up that data from the counties and run</p> <p>4 it through their process. So for those Phase 3 units it</p> <p>5 was county only. For the 25 mobile EIC units in Phase 2,</p> <p>6 DPS was staffing those, so it was only DPS officials. So</p> <p>7 it was not a mix of DPS and counties staffing the units.</p> <p>8 There were two different programs going on, one staffed</p> <p>9 by the counties and one staffed by the DPS.</p> <p>10 Q. Thank you for your testimony. What was the</p> <p>11 Secretary of State's involvement in the Interlocal</p> <p>12 Cooperation Contracts?</p> <p>13 A. Our -- our role in Phase 3 was to sort of act</p> <p>14 as go-between between the counties and DPS to make</p> <p>15 introductions and hand them off to the Department of</p> <p>16 Public Safety.</p> <p>17 Q. So Phase 2 -- just so I have it clear in my</p> <p>18 mind, Phase 2 is the mobile EIC units run by DPS, the 25</p> <p>19 that you testified about?</p> <p>20 A. The 25 mobile units that are the subject of the</p> <p>21 Memorandum of Understanding that's Exhibit 4.</p> <p>22 Q. I see. And that was in advance of both the</p> <p>23 November 2013 election and the March 2014 election?</p> <p>24 A. That's right, and the November of 2014 election</p> <p>25 as well.</p>



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23 (Pages 89 to 92)

<p style="text-align: right;">89</p> <p>1 Q. I see. And then this county program is</p> <p>2 separate and apart, and you refer to it as Phase 3; is</p> <p>3 that correct?</p> <p>4 <b>A. That's correct.</b></p> <p>5 Q. Do you see that in Exhibit 5, the Interlocal</p> <p>6 Cooperation Contract, that counties are not paid for</p> <p>7 their services?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. Why would counties want to participate in this</p> <p>10 program?</p> <p>11 <b>A. To help their voters.</b></p> <p>12 Q. Did any counties complain that this was an</p> <p>13 unfunded mandate and refuse to participate on that basis?</p> <p>14 <b>A. There were some counties who were concerned</b></p> <p>15 <b>about how much time it would take and how much effort it</b></p> <p>16 <b>would take and that it was unfunded, and I think that,</b></p> <p>17 <b>you know, a significant number of counties had those</b></p> <p>18 <b>concerns alleviated.</b></p> <p>19 Q. How were they alleviated?</p> <p>20 <b>A. By me.</b></p> <p>21 Q. Did you get them some budget or funding or did</p> <p>22 you encourage them to participate?</p> <p>23 <b>A. I encouraged them to participate and that it</b></p> <p>24 <b>would be not a high stress, high demand product, that it</b></p> <p>25 <b>would be a once in a while thing and it wouldn't tax them</b></p>	<p style="text-align: right;">91</p> <p>1 participation?</p> <p>2 <b>A. I don't know. I haven't had anything to do</b></p> <p>3 <b>with this program since the initial handoff to DPS. That</b></p> <p>4 <b>would be a Department of Public Safety question.</b></p> <p>5 Q. And under this contract -- so this contract,</p> <p>6 Exhibit 5, is not signed, correct?</p> <p>7 <b>A. Correct.</b></p> <p>8 Q. Is this the contract that -- to your knowledge,</p> <p>9 that was used with all counties?</p> <p>10 <b>A. As far as I know. You know, some of them,</b></p> <p>11 <b>after I had contacted them to see if they had signed it,</b></p> <p>12 <b>would send it back to me, and so this looks like what I</b></p> <p>13 <b>saw.</b></p> <p>14 Q. Is this the standard contract that's been used</p> <p>15 with all the counties, to your knowledge?</p> <p>16 <b>A. As far as I know it is.</b></p> <p>17 Q. There haven't been any changes, to your</p> <p>18 knowledge?</p> <p>19 <b>A. I don't know of any.</b></p> <p>20 Q. And do you see that -- under Terms and</p> <p>21 Conditions on page 1, that either party can voluntarily</p> <p>22 cancel this contract for any reason with 30 days notice?</p> <p>23 <b>A. Which paragraph?</b></p> <p>24 Q. Under IV, Terms and Conditions, on page 1,</p> <p>25 under paragraph 2, Termination, either party can</p>
<p style="text-align: right;">90</p> <p>1 unnecessarily.</p> <p>2 Q. Which were these counties?</p> <p>3 <b>A. I don't know. I talked to a lot of counties.</b></p> <p>4 Q. How many counties did you talk to?</p> <p>5 <b>A. Seventy-nine.</b></p> <p>6 Q. What period of time did you have these</p> <p>7 conversations?</p> <p>8 <b>A. October of 2013.</b></p> <p>9 Q. You talked to all 79 in October 2013?</p> <p>10 <b>A. Multiple times.</b></p> <p>11 Q. And the final -- the end result as of today is</p> <p>12 that 40 counties are participating; is that correct?</p> <p>13 <b>A. I think it's more than that. I don't know how</b></p> <p>14 <b>many more.</b></p> <p>15 Q. But you did not provide them with any funding</p> <p>16 to do this work, did you?</p> <p>17 <b>A. No, ma'am. We provided the equipment and the</b></p> <p>18 <b>training.</b></p> <p>19 Q. And according to this contract, under paragraph</p> <p>20 13, counties have to certify that they have the budget</p> <p>21 currently to conduct this program; is that correct?</p> <p>22 <b>A. Well, it looks like both parties have to make</b></p> <p>23 <b>that assertion.</b></p> <p>24 Q. Has this part of the contract proven</p> <p>25 problematic for any counties in terms of county</p>	<p style="text-align: right;">92</p> <p>1 terminate at any time with 30 days notice. Do you see</p> <p>2 that?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. So it's pretty -- I mean, a party can -- the</p> <p>5 county could unilaterally terminate its participation in</p> <p>6 this contract; is that right?</p> <p>7 <b>A. According to this it looks like they could on</b></p> <p>8 <b>30 days notice, yes, ma'am.</b></p> <p>9 Q. And counties, because they're not paid and</p> <p>10 they're not legally obligated to, as you just testified,</p> <p>11 participate, they are the ones who determine whether they</p> <p>12 want to participate; is that right?</p> <p>13 <b>A. Counties who participate in this program do so</b></p> <p>14 <b>voluntarily, yes, ma'am.</b></p> <p>15 MS. WESTFALL: Could you mark this.</p> <p>16 (Exhibit No. 6 marked)</p> <p>17 Q. I'm handing you what's been marked as</p> <p>18 Exhibit 6. Do you recognize this document?</p> <p>19 <b>A. No, ma'am.</b></p> <p>20 Q. Could you take a look to review it? While</p> <p>21 you're looking --</p> <p>22 MS. WESTFALL: Could you mark this one.</p> <p>23 (Exhibit No. 7 marked)</p> <p>24 Q. I'm handing you what's been marked as</p> <p>25 Exhibit 7. Have you seen this document?</p>

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24 (Pages 93 to 96)

<p style="text-align: right;">93</p> <p>1 <b>A. I don't believe so, no, ma'am.</b></p> <p>2 Q. Do you know what it represents?</p> <p>3 <b>A. No, ma'am.</b></p> <p>4 Q. I will represent to you, and I'm sure your</p> <p>5 counsel will not object to this representation, that</p> <p>6 these documents were attached -- were produced in</p> <p>7 conjunction with Defendants' interrogatory responses in</p> <p>8 this action. Could you take a quick look at this -- both</p> <p>9 of Exhibit 6 and Exhibit 7 and let me know when you've</p> <p>10 had a chance to scan them?</p> <p>11 <b>A. (Reviewing documents) Okay.</b></p> <p>12 Q. Do you believe that Exhibit 6 is a final list</p> <p>13 of mobile stations issuing EICs in October 2013?</p> <p>14 <b>A. No, ma'am.</b></p> <p>15 Q. What makes you say that?</p> <p>16 <b>A. Because this doesn't have any of ours on it.</b></p> <p>17 Q. And by ours, you mean?</p> <p>18 <b>A. The Phase 2 units.</b></p> <p>19 Q. What list do you believe this -- what does this</p> <p>20 represent to your mind?</p> <p>21 <b>A. I don't know.</b></p> <p>22 Q. And turning your attention to Exhibit 7, do you</p> <p>23 know what this represents?</p> <p>24 <b>A. I do not.</b></p> <p>25 Q. Do you know whether there was a reduction in</p>	<p style="text-align: right;">95</p> <p>1 lists of mobile stations -- do they encompass all of the</p> <p>2 mobile stations staffed by DPS in October 2013 and</p> <p>3 February 2014?</p> <p>4 <b>A. No, ma'am.</b></p> <p>5 Q. So these are not complete lists, to the best of</p> <p>6 your knowledge --</p> <p>7 <b>A. No.</b></p> <p>8 Q. -- as to where any subset, Phase 2, Phase 3,</p> <p>9 et cetera -- these are not complete final lists of mobile</p> <p>10 EIC unit locations?</p> <p>11 <b>A. No. If I -- well, I don't want to guess, but</b></p> <p>12 <b>if I were going to guess about what these are I would say</b></p> <p>13 <b>that these are Phase 3 counties that haven't yet accepted</b></p> <p>14 <b>the training where the DPS is going to provide EIC</b></p> <p>15 <b>services. That is my best speculation, which I'm sure my</b></p> <p>16 <b>lawyer doesn't like.</b></p> <p>17 Q. Okay. Turning your attention back to Exhibit 6</p> <p>18 and 7, these refer to dates in the past, October and</p> <p>19 February. You, nevertheless, believe that these are not</p> <p>20 final lists. Okay. Well, let's -- let's put these</p> <p>21 aside.</p> <p>22 And I believe it was your testimony that</p> <p>23 there was not a change in counties participating in</p> <p>24 mobile EIC unit availability between October 2013 and</p> <p>25 February 2014. Is that correct?</p>
<p style="text-align: right;">94</p> <p>1 the number of mobile EIC units between October 2013 and</p> <p>2 February 2014?</p> <p>3 <b>A. There was not.</b></p> <p>4 Q. Was it an increase or did it stay the same?</p> <p>5 <b>A. It would have been the same.</b></p> <p>6 Q. Did some -- so to your knowledge no counties</p> <p>7 that participated in October 2013 decided not to in 2014?</p> <p>8 <b>A. I don't know what you mean by counties that</b></p> <p>9 <b>participated. Participated in what?</b></p> <p>10 Q. In the mobile EIC unit program.</p> <p>11 <b>A. Which phase?</b></p> <p>12 Q. The phase -- Phase 3 is the county offices, so</p> <p>13 those are not mobile EIC units, correct?</p> <p>14 <b>A. They are.</b></p> <p>15 Q. You call them mobile EIC units? Are they --</p> <p>16 <b>A. They're mobile.</b></p> <p>17 Q. They're mobile? Those are not -- those are --</p> <p>18 those are not permanent sites that issue EICs permanently</p> <p>19 or you consider those to be mobile and temporary?</p> <p>20 <b>A. They're -- they're located within the county</b></p> <p>21 <b>permanently, but it's the same equipment that a mobile</b></p> <p>22 <b>unit would have. It's -- it's transportable from one</b></p> <p>23 <b>office to an office down the hall if they need to.</b></p> <p>24 <b>It's -- it's mobile.</b></p> <p>25 Q. Okay. So turning back to 6 and 7, are these</p>	<p style="text-align: right;">96</p> <p>1 <b>A. Well, I don't know what you mean by that.</b></p> <p>2 <b>That's -- that's what I don't understand, because the</b></p> <p>3 <b>number of counties who directly participated by offering</b></p> <p>4 <b>EICs themselves went up between October and February,</b></p> <p>5 <b>October of 2013 and February of 2014, so the number of</b></p> <p>6 <b>counties that -- that were in that 79 that didn't have a</b></p> <p>7 <b>DL office that DPS had to service directly went down. So</b></p> <p>8 <b>it changed, but I believe it increased.</b></p> <p>9 Q. Okay. And then with regard to mobile EIC units</p> <p>10 run by DPS itself, not run by the counties, did that</p> <p>11 number increase or decrease between October 2013 and</p> <p>12 February 2014?</p> <p>13 <b>A. I don't know. That's a DPS question. It's my</b></p> <p>14 <b>understanding that the number actually run by DPS</b></p> <p>15 <b>themselves decreased between October and February because</b></p> <p>16 <b>the number that were serviced by the counties themselves</b></p> <p>17 <b>increased, and the number of personnel involved would</b></p> <p>18 <b>have decreased because our office became involved in the</b></p> <p>19 <b>mobile Phase 2 program and supplied some of the</b></p> <p>20 <b>personnel.</b></p> <p>21 Q. And when did that -- that aspect start with --</p> <p>22 with the Secretary of State staffing?</p> <p>23 <b>A. January of 2014.</b></p> <p>24 Q. Why did that occur?</p> <p>25 <b>A. I don't know. I mean, it occurred because we</b></p>

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<p style="text-align: right;">97</p> <p>1 thought it was a good idea to assist the DPS with</p> <p>2 staffing these units and DPS thought it was a good idea</p> <p>3 and offered the training to us.</p> <p>4 Q. Was DPS unable to or have shortcomings or</p> <p>5 difficulty in staffing its mobile EIC units itself and</p> <p>6 sought your assistance?</p> <p>7 A. No, it was just an agreement between us that it</p> <p>8 was better for us to participate in sharing the load.</p> <p>9 Q. And why was that? Was it a resource issue?</p> <p>10 Were there other considerations?</p> <p>11 A. I -- I don't know if it's a resource issue on</p> <p>12 DPS' part, but we definitely wanted to have a part in --</p> <p>13 in making these available to the public.</p> <p>14 Q. Were you concerned about any aspects of DPS'</p> <p>15 administration or issuance of the EICs and you wanted to</p> <p>16 have a role in it yourself as Secretary of State?</p> <p>17 A. No, ma'am, there were no concerns. We were</p> <p>18 just trying to help.</p> <p>19 Q. Turning back to October 2013, are you aware of</p> <p>20 any problems in the -- any difficulties, complaints,</p> <p>21 shortcomings in the operation of the mobile EIC units?</p> <p>22 A. I don't know what you mean. Do you mean</p> <p>23 objectively were there issues that came up logistically</p> <p>24 or do you mean subjectively did people complain about it?</p> <p>25 Q. Let's start off with the people complaining</p>	<p style="text-align: right;">99</p> <p>1 this prompted your memory. Have you seen this e-mail</p> <p>2 before?</p> <p>3 A. Not that I can recall, no, ma'am.</p> <p>4 Q. Do you see that it indicates that several</p> <p>5 counties have declined to participate in the EIC program?</p> <p>6 A. This list pertains to the Phase 3 portion of</p> <p>7 the program, and yes, these counties, as of September 26,</p> <p>8 had declined to participate.</p> <p>9 Q. Did they at some point thereafter change their</p> <p>10 mind?</p> <p>11 A. I don't know. I'd have to see what the current</p> <p>12 list of participating counties is to know that.</p> <p>13 Q. Do you know what the basis was for their</p> <p>14 refusal to participate?</p> <p>15 A. Just what the e-mail says. It says lack of</p> <p>16 facilities, staffing, population, or some combination of</p> <p>17 the three. That is consistent with my conversations with</p> <p>18 some of these counties.</p> <p>19 Q. Were you otherwise able to locate a DPS-run</p> <p>20 Phase 2 mobile EIC unit in these counties, to the best of</p> <p>21 your recollection, in October 2013?</p> <p>22 A. These counties would have received a Phase 3</p> <p>23 unit, and the Phase 3 units were in place longer than the</p> <p>24 Phase 2 units, so DPS would have blocked out a five-day</p> <p>25 window of time in each of these counties to -- to be</p>
<p style="text-align: right;">98</p> <p>1 about it. Are you aware of complaints?</p> <p>2 A. I know that we had one e-mailed complaint from</p> <p>3 a fellow, I believe his name was Glen Johnson, in</p> <p>4 Harris County about the Holman Street location, signage</p> <p>5 and that sort of thing. I don't know of any other</p> <p>6 subjective complaints that we received from the public.</p> <p>7 You know, some of the election officials in the counties</p> <p>8 might have had some issues with, you know, how they were</p> <p>9 talked to by DPS, you know, that sort of interpersonal</p> <p>10 thing, but, you know, I can't remember anything specific.</p> <p>11 Q. Is there anything else, any other complaints</p> <p>12 that you heard about people making about the October 2013</p> <p>13 program?</p> <p>14 A. Not that I can recall our office receiving off</p> <p>15 the top of my head.</p> <p>16 MS. WESTFALL: Would you mark this.</p> <p>17 (Exhibit No. 8 marked)</p> <p>18 Q. I'm handing you what's been marked as</p> <p>19 Exhibit 8. Have you seen this document before?</p> <p>20 A. By the way, that's the fellow's name in the</p> <p>21 Governor's Office.</p> <p>22 Q. Is it Mr. Stephenson MacGregor or MacGregor</p> <p>23 Stephenson?</p> <p>24 A. MacGregor Stephenson.</p> <p>25 Q. Okay. Thank you for that correction. Glad</p>	<p style="text-align: right;">100</p> <p>1 present prior to the November 2013 election.</p> <p>2 Q. And DPS was able to do that even without the</p> <p>3 consent of these counties or they -- they went in and</p> <p>4 somehow got facilities for the mobile EIC unit? How did</p> <p>5 that -- how did that actually happen?</p> <p>6 A. I don't know. You'd have to ask DPS how that</p> <p>7 happened. But certainly DPS can go where they want to go</p> <p>8 and do what they want to do. They don't have to have the</p> <p>9 county's consent to do that.</p> <p>10 Q. Just to clarify your testimony as to -- as to</p> <p>11 Phase 3 -- I haven't heard these terms before this</p> <p>12 deposition, so I just want to make sure your testimony on</p> <p>13 the record is clear. These counties did not want to</p> <p>14 participate in the county-run mobile EIC program; is that</p> <p>15 correct?</p> <p>16 A. That's correct. These counties were declining</p> <p>17 to accept the equipment at this point, September 26,</p> <p>18 2013. I believe some of these counties changed their</p> <p>19 mind thereafter. But they didn't want the equipment,</p> <p>20 they didn't want the training, they didn't want to have</p> <p>21 to be issuing election identification certificates on an</p> <p>22 ongoing basis to voters in their county.</p> <p>23 Q. And there -- was there anything that DPS or --</p> <p>24 or Secretary of State's Office could do when faced with</p> <p>25 counties that refused to participate in Phase 3 from a</p>

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26 (Pages 101 to 104)

<p style="text-align: right;">101</p> <p>1 legal standpoint?</p> <p>2 <b>A. From a legal standpoint, no. But we could</b></p> <p>3 <b>definitely call and persuade.</b></p> <p>4 Q. Did these counties, to your knowledge, have</p> <p>5 driver license offices?</p> <p>6 <b>A. I don't believe that these counties have a</b></p> <p>7 <b>driver license office.</b></p> <p>8 Q. Was Phase 3 and the targeting of the Phase 3</p> <p>9 directed towards -- only towards counties that did not</p> <p>10 have driver license offices?</p> <p>11 <b>A. That's correct.</b></p> <p>12 Q. Do you know which counties of this list in</p> <p>13 Exhibit 8 changed their position with regard to</p> <p>14 participation in the Phase 3?</p> <p>15 <b>A. I'd have to go -- I'd have to go check to make</b></p> <p>16 <b>sure. I don't want to -- I don't want to guess about</b></p> <p>17 <b>that.</b></p> <p>18 Q. Thank you. To your knowledge did any counties</p> <p>19 refuse to receive training on how to issue EICs?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. And which counties; do you recall?</p> <p>22 <b>A. I don't know. There's a list at DPS of</b></p> <p>23 <b>counties who have accepted the training, accepted the</b></p> <p>24 <b>equipment. There's -- there are counties who have</b></p> <p>25 <b>accepted the training and it hasn't occurred yet, and</b></p>	<p style="text-align: right;">103</p> <p>1 <b>A. I don't know if I've seen it. Wroe would have</b></p> <p>2 <b>talked to me about it.</b></p> <p>3 Q. And what is this?</p> <p>4 <b>A. This is an e-mail from Tony Rodriguez to our</b></p> <p>5 <b>general counsel, Wroe Jackson, about some locations,</b></p> <p>6 <b>looks like in Travis County.</b></p> <p>7 Q. And what is the concern expressed here?</p> <p>8 <b>A. That -- that there had been poor communication</b></p> <p>9 <b>between Travis County and the locations regarding the</b></p> <p>10 <b>arrival of mobile EIC units.</b></p> <p>11 Q. Were you aware of these concerns about poor</p> <p>12 communications?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. What was your response or reaction?</p> <p>15 <b>A. My response -- I don't know. We were</b></p> <p>16 <b>coordinating, I believe, with both Mr. Elfant's office as</b></p> <p>17 <b>well as Dana DeBeauvoir's office on these, but I probably</b></p> <p>18 <b>would have called Michael Winn and said, you need to get</b></p> <p>19 <b>on the stick, these people didn't know we were coming,</b></p> <p>20 <b>what's the deal.</b></p> <p>21 Q. Who is Michael Winn?</p> <p>22 <b>A. Michael Winn is the director of elections for</b></p> <p>23 <b>Travis County.</b></p> <p>24 Q. Did the Secretary of State's Office have any</p> <p>25 concern that, given what appeared to be lack of</p>
<p style="text-align: right;">102</p> <p>1 <b>then there are counties who have refused the training and</b></p> <p>2 <b>refused the equipment, so I don't know what that current</b></p> <p>3 <b>list is. That's the Department of Public Safety.</b></p> <p>4 <b>Phase 3 has been handed off.</b></p> <p>5 Q. From the standpoint of the Secretary of State's</p> <p>6 Office, is there anything you can do in response other</p> <p>7 than persuasion to try to change the position of those</p> <p>8 counties on acceptance of Phase 3?</p> <p>9 <b>A. At this point, no, ma'am.</b></p> <p>10 Q. Are you aware of any complaints about</p> <p>11 inadequate notice of locations of mobile EIC units?</p> <p>12 <b>A. From the public? From the election officials?</b></p> <p>13 <b>From the DPS?</b></p> <p>14 Q. From -- from any source whatsoever.</p> <p>15 <b>A. I don't know. I can't recall any specific</b></p> <p>16 <b>complaints from the public. I know that, you know,</b></p> <p>17 <b>sometimes the local election officials wish they would</b></p> <p>18 <b>have received a call sooner when we were talking about</b></p> <p>19 <b>coming next week. And so I don't know. You know, it's</b></p> <p>20 <b>the -- it's the normal sort of thing when you're putting</b></p> <p>21 <b>together a program on the fly.</b></p> <p>22 MS. WESTFALL: Could you mark this as 9.</p> <p>23 (Exhibit No. 9 marked)</p> <p>24 Q. I'm handing you what's been marked as</p> <p>25 Exhibit 9. Have you seen this before?</p>	<p style="text-align: right;">104</p> <p>1 communication, that there would not be adequate notice to</p> <p>2 voters about the availability of EICs through these</p> <p>3 offices?</p> <p>4 <b>A. I -- I don't know if we had any specific</b></p> <p>5 <b>concerns in that regard. Obviously less time is less</b></p> <p>6 <b>ability to generate awareness.</b></p> <p>7 MS. WESTFALL: Could you mark this as 10,</p> <p>8 please.</p> <p>9 (Exhibit No. 10 marked)</p> <p>10 Q. I'm handing you what's been marked as</p> <p>11 Exhibit 10. Have you seen this before?</p> <p>12 <b>A. I don't believe so, no, ma'am.</b></p> <p>13 Q. Do you see that it is an e-mail concerning</p> <p>14 Coke County's inability to attend training?</p> <p>15 <b>A. That's right.</b></p> <p>16 Q. Is this what you testified about earlier, that</p> <p>17 some counties were not available or were unwilling to</p> <p>18 attend training?</p> <p>19 <b>A. Yes. And --</b></p> <p>20 Q. And you're referring back to Exhibit --</p> <p>21 <b>A. I was looking back on Exhibit 8 to see if</b></p> <p>22 <b>Coke County was one of the ones that had -- that had</b></p> <p>23 <b>declined, but they -- they do not appear on that list, so</b></p> <p>24 <b>apparently they had agreed to it, they just couldn't work</b></p> <p>25 <b>out the logistics on this round of training.</b></p>

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27 (Pages 105 to 108)

<p style="text-align: right;">105</p> <p>1 MS. WESTFALL: Could you mark this.</p> <p>2 (Exhibit No. 11 marked)</p> <p>3 Q. I'm handing you what's been marked as</p> <p>4 Exhibit 11. Have you seen this e-mail before?</p> <p>5 A. I don't believe so, no, ma'am.</p> <p>6 Q. Does this e-mail indicate that Mason County</p> <p>7 decided to not participate in training?</p> <p>8 A. Yes, that's what it indicates, that</p> <p>9 Mason County, as of October 15, had declined.</p> <p>10 Q. Had you heard anything about problems with</p> <p>11 Mason County?</p> <p>12 A. Yeah, Mason County was one that was in and out,</p> <p>13 and so, yeah, I remember Mason County.</p> <p>14 Q. And this is with regard to the Phase 3</p> <p>15 county-run offices?</p> <p>16 A. That's correct.</p> <p>17 Q. What is the current status of Mason County?</p> <p>18 A. I don't know.</p> <p>19 Q. Have you sought to persuade Mason County to</p> <p>20 participate?</p> <p>21 A. I did back then. I haven't talked to them</p> <p>22 since October.</p> <p>23 Q. Did you have any complaints or concerns from</p> <p>24 county election officials about inadequate number of</p> <p>25 sites within their counties of mobile units?</p>	<p style="text-align: right;">107</p> <p>1 schedule a return visit closer to the election or to</p> <p>2 offer them EIC mobile units in 2014.</p> <p>3 Q. Do you know whether other counties had similar</p> <p>4 complaints about or concerns about lack of adequate</p> <p>5 number of EIC mobile units?</p> <p>6 A. I don't know. It could be that there were</p> <p>7 other ones that wanted more coverage.</p> <p>8 MS. WESTFALL: Could you mark this as</p> <p>9 Exhibit 13.</p> <p>10 (Exhibit No. 13 marked)</p> <p>11 Q. I'm handing you what's been marked as</p> <p>12 Exhibit 13. Have you seen this before?</p> <p>13 A. I don't know if I've seen it, no, ma'am.</p> <p>14 Q. Do you see that the e-mail in the middle of</p> <p>15 this from Wroe Jackson to Mr. Javier Chacon was -- you</p> <p>16 were copied on it?</p> <p>17 A. Uh-huh.</p> <p>18 Q. Do you recall receiving this e-mail?</p> <p>19 A. I know that we were talking to El Paso about</p> <p>20 it, yes.</p> <p>21 Q. Do you recall the problem in El Paso?</p> <p>22 A. That they wanted more time during the day, more</p> <p>23 extended hours.</p> <p>24 Q. Did you -- what was your response to that</p> <p>25 request?</p>
<p style="text-align: right;">106</p> <p>1 A. I don't know. I'm sure that there were some</p> <p>2 counties who wanted more locations than the DPS and us</p> <p>3 were able to provide, and our solution to that was to</p> <p>4 offer them to come back later or to do it in 2014</p> <p>5 election cycle.</p> <p>6 MS. WESTFALL: Could you mark this,</p> <p>7 please, as Exhibit 12.</p> <p>8 (Exhibit No. 12 marked)</p> <p>9 Q. I'm handing you what's been marked as</p> <p>10 Exhibit 12. Do you recognize this document?</p> <p>11 A. No, ma'am.</p> <p>12 Q. Had you heard about any -- is this an e-mail</p> <p>13 from Robert Heard to Wroe Jackson?</p> <p>14 A. Appears to be, yes, ma'am.</p> <p>15 Q. And could you take a minute to look at the</p> <p>16 e-mail, the message at the top to Mr. Jackson?</p> <p>17 A. (Reviewing document) Okay. Yes, ma'am.</p> <p>18 Q. Had you heard about this concern from</p> <p>19 Mr. Heard?</p> <p>20 A. I don't know if I heard about this concern</p> <p>21 specifically. I know that Dallas wanted more EIC</p> <p>22 service.</p> <p>23 Q. What was the response of DPS and Secretary of</p> <p>24 State to that request?</p> <p>25 A. Well, our response would have been to either</p>	<p style="text-align: right;">108</p> <p>1 A. That we explained to them when DPS could be</p> <p>2 there and that for extended hours we'd need advance</p> <p>3 approval.</p> <p>4 Q. So in other words, your response was that you</p> <p>5 were not able to provide longer hours?</p> <p>6 A. I don't know if we ended up providing longer</p> <p>7 hours or not. I do know that we had to talk to DPS about</p> <p>8 that, and we did in a few locations. I know we did it in</p> <p>9 Webb County. I'm not sure what happened in El Paso.</p> <p>10 Q. Do you know whether in October 2013 any of the</p> <p>11 DPS-run mobile EIC units were open past four o'clock in</p> <p>12 the afternoon?</p> <p>13 A. I believe some were, yes, ma'am.</p> <p>14 Q. Do you know which counties were?</p> <p>15 A. I know in Webb County that there were extended</p> <p>16 hours to 6:30 or 7:00.</p> <p>17 Q. And do you see a reference to logistical and</p> <p>18 staffing concerns with DPS that are referred to in this</p> <p>19 e-mail?</p> <p>20 A. Yes.</p> <p>21 Q. Do you understand what those logistical and</p> <p>22 staffing concerns were?</p> <p>23 A. I don't know the specifics on that, no, ma'am.</p> <p>24 Q. Was there -- did DPS take the position that the</p> <p>25 mobile EIC units run by DPS should be open during</p>



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<p style="text-align: right;">109</p> <p>1 business hours only because that's when their staff was</p> <p>2 available to staff them?</p> <p>3 A. DPS believed that the mobile units should be</p> <p>4 open during business hours, yes, ma'am.</p> <p>5 Q. And was that the practice and the case for</p> <p>6 mobile units prior to November 2013 election?</p> <p>7 A. That was the case for the Phase 2 units. I</p> <p>8 don't know what the counties did with the Phase 3 units.</p> <p>9 And I know that we had some exceptions to this general</p> <p>10 rule, but we would have to get it pre-approved by DPS.</p> <p>11 Q. So in other words, it was DPS' decision as to</p> <p>12 the hours of operation of its mobile -- of mobile EIC</p> <p>13 units run by DPS; is that correct?</p> <p>14 A. DPS was staffing the units and they had the</p> <p>15 units in their possession, so the logistics on getting</p> <p>16 the units to the location and having staff available to</p> <p>17 man the units would have been a DPS decision, yes, ma'am.</p> <p>18 Q. Did you have conversations with DPS about</p> <p>19 extending its hours of operation in the mobile EIC units?</p> <p>20 A. Yes.</p> <p>21 Q. When were those conversations?</p> <p>22 A. I don't know. In the fall of 2013. You know,</p> <p>23 specifically in the context of Webb County I know we had</p> <p>24 that discussion and some extended hours were approved.</p> <p>25 I don't know of another instance where that occurred.</p>	<p style="text-align: right;">111</p> <p>1 Q. I'm handing you what's been marked as</p> <p>2 Exhibit 14. Do you recognize this document?</p> <p>3 A. No.</p> <p>4 Q. Were you -- did you become aware of any of</p> <p>5 these concerns raised in these e-mails from Mr. Jackson?</p> <p>6 A. I don't know. We would have talked about it</p> <p>7 probably.</p> <p>8 Q. Turning your attention to page TEX 00461906,</p> <p>9 which is the second page of Exhibit 14, do you see an</p> <p>10 e-mail from Mr. Jackson to Pam Smith --</p> <p>11 A. Yes.</p> <p>12 Q. -- at the bottom? And do you see that there is</p> <p>13 discussion of the three-day deadline to get locations</p> <p>14 locked in?</p> <p>15 A. Yes.</p> <p>16 Q. And do you see Mr. Jackson expressed concerns</p> <p>17 about the practicality of doing that?</p> <p>18 A. Yes.</p> <p>19 Q. Do you recall having difficulties getting</p> <p>20 locations locked in within three days?</p> <p>21 A. When we were first getting the program rolling,</p> <p>22 definitely, when we were cobbling it together and trying</p> <p>23 to get places lined up. But as we went on, then I had</p> <p>24 more lead time to work with the counties and this was far</p> <p>25 less of a problem after we were rolling.</p>
<p style="text-align: right;">110</p> <p>1 Q. And what was your position in that -- or what</p> <p>2 was the Secretary of State's position in that</p> <p>3 conversation?</p> <p>4 A. Our position was that if we could have at least</p> <p>5 one day at each location with an hour past regular</p> <p>6 closing hours, that that would be a good thing to do if</p> <p>7 we could do it.</p> <p>8 Q. And did DPS accept that recommendation?</p> <p>9 A. Not all the time, no, ma'am.</p> <p>10 Q. And you can only recall one county, Webb</p> <p>11 County, where that occurred at least with regard to the</p> <p>12 2013 operation of the mobile units?</p> <p>13 A. That I can recall right now. I don't know if</p> <p>14 it happened more than that. I think perhaps it did, but</p> <p>15 I know it happened with Oscar in Webb County.</p> <p>16 Q. I'm sorry. With another county called?</p> <p>17 A. With Oscar Villarreal. He's the election</p> <p>18 administer in Webb County.</p> <p>19 Q. Thank you. Were there any other logistical or</p> <p>20 staffing concerns that you were aware of that Mr. Jackson</p> <p>21 was alluding to in this e-mail at Exhibit 13?</p> <p>22 A. No, ma'am.</p> <p>23 MS. WESTFALL: Could you mark this,</p> <p>24 please, as Exhibit 14.</p> <p>25 (Exhibit No. 14 marked)</p>	<p style="text-align: right;">112</p> <p>1 Q. When did -- when were the problems with meeting</p> <p>2 the three-day deadline occurring just in terms of the</p> <p>3 calendar?</p> <p>4 A. Right. That would have been late September or</p> <p>5 early October.</p> <p>6 Q. When did you feel that locations -- the</p> <p>7 identification of the locations became easier and</p> <p>8 clearer?</p> <p>9 A. Well, you know, we had mapped out where we</p> <p>10 intended to be, and so -- some counties are more</p> <p>11 responsive and easier to work with than other counties.</p> <p>12 And so as the program progressed there were counties who</p> <p>13 were what we call green -- I don't know if you've seen</p> <p>14 the matrices from Tony Rodriguez, but the green counties</p> <p>15 stretched out further and further in advance. But even</p> <p>16 in those weeks there were some counties who were still</p> <p>17 black, which means that they hadn't committed one way or</p> <p>18 the other to give us locations. So overall the program</p> <p>19 got better by the middle of October for sure, but there</p> <p>20 were always some counties where it was, you know, sort of</p> <p>21 putting it together at the last minute.</p> <p>22 Q. I see. And so I -- I don't think I know the</p> <p>23 document you're referring to, but the green counties were</p> <p>24 counties that had agreed to participate in Phase 2 or</p> <p>25 Phase 3?</p>

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29 (Pages 113 to 116)

<p style="text-align: right;">113</p> <p>1 A. Phase 2.</p> <p>2 Q. Phase 2, DPS?</p> <p>3 A. We're talking about Phase 2 on -- on this --</p> <p>4 this e-mail is the MOU.</p> <p>5 Q. Right.</p> <p>6 A. This is Phase 2.</p> <p>7 Q. Oh, the MOU, right, right. Thank you.</p> <p>8 MS. WESTFALL: Could you mark this as 14.</p> <p>9 MR. KEISTER: 15.</p> <p>10 MS. WESTFALL: 15? Sorry.</p> <p>11 (Exhibit No. 15 marked)</p> <p>12 Q. I'm handing you what's been marked as</p> <p>13 Exhibit 15. Have you seen this document before?</p> <p>14 A. Yes.</p> <p>15 Q. What is it?</p> <p>16 A. It's a letter from Bruce Elfant to me.</p> <p>17 Q. Who is Bruce Elfant?</p> <p>18 A. He's the tax assessor-collector for</p> <p>19 Travis County.</p> <p>20 Q. When was the letter sent?</p> <p>21 A. October 13, 2013.</p> <p>22 Q. How would you describe the purpose of the</p> <p>23 letter?</p> <p>24 A. The purpose of the letter was to tell me what</p> <p>25 they had done with regard to voter outreach and to say</p>	<p style="text-align: right;">115</p> <p>1 2013.</p> <p>2 Q. So you decided to follow his advice and do a</p> <p>3 mass mail-out? Was that done by the Secretary of State's</p> <p>4 Office or was that done by county -- county offices?</p> <p>5 A. No, ma'am, that is the normal county process</p> <p>6 that they do at the end of every odd-numbered year.</p> <p>7 Q. And this was the election registration</p> <p>8 certificate that went to voters?</p> <p>9 A. That's right. Orange colored this year.</p> <p>10 Q. Probably not using the right term. But the</p> <p>11 voter registration card was sent out to every single</p> <p>12 voter in the state?</p> <p>13 A. Every single voter.</p> <p>14 Q. And on the back of it, it listed the forms of</p> <p>15 ID?</p> <p>16 A. That are required to vote, yes, ma'am.</p> <p>17 Q. What else did it list on the card that</p> <p>18 pertained to SB 14?</p> <p>19 A. I don't believe it has anything else with</p> <p>20 regard to SB 14. The list of required IDs is in Spanish</p> <p>21 and English on the back of the card.</p> <p>22 Q. Did it provide any information about how a</p> <p>23 voter may obtain an EIC?</p> <p>24 A. I don't know. I'd have to read the card.</p> <p>25 Q. Has the card been produced to us in litigation?</p>
<p style="text-align: right;">114</p> <p>1 that they didn't think any more EIC units in</p> <p>2 Travis County would be necessary for this election cycle.</p> <p>3 Q. So can you describe and list all of the</p> <p>4 concerns that Mr. Elfant raised?</p> <p>5 A. You want me to read his letter?</p> <p>6 Q. No, just as you perceived it, since the letter</p> <p>7 was directed to you.</p> <p>8 A. I mean, you'd have to ask Mr. Elfant what his</p> <p>9 concerns were. I can read his letter.</p> <p>10 Q. Did he have concerns about inadequate notice of</p> <p>11 the location of the sites?</p> <p>12 A. He said that there was short time, very little</p> <p>13 time.</p> <p>14 Q. And so that was inadequate notice; is that</p> <p>15 right?</p> <p>16 A. I don't know if that's inadequate notice or</p> <p>17 not. You'd have to ask Mr. Elfant if that's what he</p> <p>18 thought was meant by very little time. I think he says</p> <p>19 that he appreciated the SOS' efforts in this regard.</p> <p>20 Q. Did he also raise a suggestion that there could</p> <p>21 have been mailings done to voters without state-issued</p> <p>22 IDs?</p> <p>23 A. He -- he thinks that a better way to go would</p> <p>24 be to mail new voter ID requirements to each voter, and</p> <p>25 that's what happened in the mass mail-out at the end of</p>	<p style="text-align: right;">116</p> <p>1 A. I have no idea.</p> <p>2 MS. WESTFALL: Mr. Keister, do you know?</p> <p>3 MR. KEISTER: I can't answer that</p> <p>4 question. I would suspect it has been, but --</p> <p>5 MS. WESTFALL: If it hasn't been, we would</p> <p>6 ask that it is.</p> <p>7 BY MS. WESTFALL:</p> <p>8 Q. So the cards -- the voter registration cards</p> <p>9 were sent by the counties; is that correct?</p> <p>10 A. That's right.</p> <p>11 Q. And did the Secretary of State separately do</p> <p>12 any mailings to voters in response to Mr. Elfant's</p> <p>13 letter?</p> <p>14 A. No, ma'am.</p> <p>15 Q. Did you take any steps at all in response to</p> <p>16 Mr. Elfant's letter?</p> <p>17 A. No.</p> <p>18 Q. Why not?</p> <p>19 A. What steps should I take?</p> <p>20 Q. Did you think he raised any legitimate concerns</p> <p>21 in his letter or did you not?</p> <p>22 A. I just appreciated his input.</p> <p>23 Q. Do you see that Mr. Elfant makes the</p> <p>24 observation that it's much more difficult to reach this</p> <p>25 population than expected?</p>

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30 (Pages 117 to 120)

<p style="text-align: right;">117</p> <p>1 A. I see that Mr. Elfant is assuming there's a</p> <p>2 population to reach, yes.</p> <p>3 Q. And that he is of the view that it's a</p> <p>4 difficult population to reach. Is that what he expresses</p> <p>5 in the letter?</p> <p>6 A. That's what he says. We can read his letter</p> <p>7 together if you want.</p> <p>8 Q. Do you agree with that assessment?</p> <p>9 A. I don't know what population he's talking</p> <p>10 about.</p> <p>11 Q. So you do not -- just to clarify, you don't</p> <p>12 agree with the assessment that they're difficult to reach</p> <p>13 because you don't believe there is such population. Am I</p> <p>14 summarizing your testimony correctly?</p> <p>15 A. No, ma'am.</p> <p>16 Q. Could you clarify?</p> <p>17 A. I don't know who the population is that doesn't</p> <p>18 have an acceptable form of ID. That has been the</p> <p>19 question that has been in our minds the whole time we've</p> <p>20 been going through this process, so whether or not there</p> <p>21 is a particular population that doesn't have an</p> <p>22 acceptable form of ID and whether or not that population</p> <p>23 is hard to reach are very unresolved questions at this</p> <p>24 point. I appreciate Mr. Elfant's input.</p> <p>25 MS. WESTFALL: Could you mark this as 16,</p>	<p style="text-align: right;">119</p> <p>1 Q. And what does DL mobile refer to?</p> <p>2 A. I don't know.</p> <p>3 Q. Do you know who would know?</p> <p>4 A. I presume the Department of Public Safety.</p> <p>5 Q. Do you know how many EICs were issued as of</p> <p>6 February 3, 2014?</p> <p>7 A. I do not. I heard the number 226 somewhere</p> <p>8 around that time, but I don't know if it was after that</p> <p>9 or before that.</p> <p>10 Q. I will represent to you that based on this</p> <p>11 document produced from Defendants with interrogatory</p> <p>12 responses that it indicates that 65 EICs were issued</p> <p>13 through a DL mobile station. Does that sound accurate to</p> <p>14 you based on your knowledge of the mobile program?</p> <p>15 A. I have no idea.</p> <p>16 Q. So, Mr. Ingram, as you may recall from our</p> <p>17 discussion of the deposition notice, one of the topics in</p> <p>18 the notice is -- well, let's turn to Exhibit 1. Turning</p> <p>19 back to Exhibit A to Exhibit 1, which is the amended</p> <p>20 notice of deposition, it indicates that topic 1 is</p> <p>21 concerning policies and procedures related to</p> <p>22 implementation concerning applications for and issuance</p> <p>23 of EICs.</p> <p>24 A. Sure.</p> <p>25 Q. And you are here to testify, and you said</p>
<p style="text-align: right;">118</p> <p>1 please.</p> <p>2 (Exhibit No. 16 marked)</p> <p>3 Q. Mr. Ingram, I'm handing you what's been marked</p> <p>4 as Exhibit 16. Have you seen this document before?</p> <p>5 A. No, ma'am.</p> <p>6 Q. Do you see that it's a list of valid EIC</p> <p>7 issuances? At least that's what it's captioned on</p> <p>8 page 1.</p> <p>9 A. I see that caption, yes, ma'am.</p> <p>10 Q. Do you know who prepared this list?</p> <p>11 A. I have no idea.</p> <p>12 Q. If you could, take a look at Exhibit 16 and let</p> <p>13 me know when you've had a chance just to scan through the</p> <p>14 pages.</p> <p>15 A. (Reviewing document) Okay.</p> <p>16 Q. I will represent to you that this list was</p> <p>17 produced in connection with Defendants' interrogatory</p> <p>18 responses. Do you have any reason to believe that this</p> <p>19 list of valid EIC issuances as of February 3, 2014, is</p> <p>20 not accurate?</p> <p>21 A. I don't have any basis for saying it's accurate</p> <p>22 or not accurate.</p> <p>23 Q. Do you see that the list indicates whether the</p> <p>24 EIC was issued in an office or a mobile?</p> <p>25 A. I do see that.</p>	<p style="text-align: right;">120</p> <p>1 you're qualified to testify for all the topics listed in</p> <p>2 this notice; is that correct?</p> <p>3 A. Right. And the notice is served on the</p> <p>4 Secretary of State's Office.</p> <p>5 Q. Correct. And you're here --</p> <p>6 A. So with regard to our office I am the one most</p> <p>7 qualified to testify on that point, and with regard to</p> <p>8 our office the DPS does not tell us how many they've</p> <p>9 issued and from what source they've been issued.</p> <p>10 Q. I see.</p> <p>11 MR. KEISTER: Let her ask her question.</p> <p>12 MS. WESTFALL: So, Mr. Keister, is there</p> <p>13 someone more knowledgeable about the number of EICs</p> <p>14 issued from DPS, from the standpoint of the Secretary of</p> <p>15 State's Office, who can -- who's qualified to testify on</p> <p>16 Topic 1 on EICs?</p> <p>17 MR. KEISTER: I can't add anything to what</p> <p>18 Mr. Ingram just stated. I think he pretty well stated</p> <p>19 it.</p> <p>20 MS. WESTFALL: My question is whether</p> <p>21 there is a more knowledgeable, prepared designee for</p> <p>22 Topic 1 as it pertains to EICs from the Secretary of</p> <p>23 State's Office than Mr. Ingram.</p> <p>24 MR. KEISTER: Well, the person we have</p> <p>25 designated is the person that we think has the most</p>

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<p style="text-align: right;">121</p> <p>1 knowledge on these particular issues.</p> <p>2 MS. WESTFALL: So there's no one --</p> <p>3 MR. KEISTER: Or at least has knowledge to</p> <p>4 testify on these issues. Now, obviously they can't</p> <p>5 testify about DPS issues. I think that's what Mr. Ingram</p> <p>6 was trying to state.</p> <p>7 MS. WESTFALL: Okay. Okay. But you --</p> <p>8 you did not serve any objections to this notice as to</p> <p>9 the -- as to the topics and inability to testify from the</p> <p>10 standpoint of Secretary of State; is that correct?</p> <p>11 MR. KEISTER: Correct.</p> <p>12 BY MS. WESTFALL:</p> <p>13 Q. So assuming that as of February 3, 2014, 65</p> <p>14 EICs were issued from mobile EIC units, would that relate</p> <p>15 to the mobile EIC unit program just in September and</p> <p>16 October 2013 or was it available continuously from the</p> <p>17 time it was established in the summer of 2013 up until</p> <p>18 February 3, 2014?</p> <p>19 A. I'm not sure what you're asking.</p> <p>20 Q. Do mobile EIC units -- are they continuously in</p> <p>21 operation or only for certain dates and times?</p> <p>22 A. Again, I'm not sure what you're asking.</p> <p>23 Q. For Phase 2 DPS-run mobile units, are they only</p> <p>24 available for certain dates and times or are they</p> <p>25 continuously available as of when they start?</p>	<p style="text-align: right;">123</p> <p>1 A. I thought it was significantly less than that,</p> <p>2 so --</p> <p>3 Q. What was that based on?</p> <p>4 A. Just me in my head.</p> <p>5 Q. Are there no other facts or bases for that</p> <p>6 prediction?</p> <p>7 A. No. The DPS has not reported to the Secretary</p> <p>8 of State's Office on a regular basis at all the number of</p> <p>9 EICs issued, the location that those were issued from,</p> <p>10 the circumstances of their issuance. That is not</p> <p>11 something that DPS has reported to the Secretary of</p> <p>12 State's Office, so with regard to the actual number of</p> <p>13 EICs issued, we have been in the dark on that. Our</p> <p>14 office has not kept tabs with it, our office has not been</p> <p>15 informed of it, our office hasn't requested to know it.</p> <p>16 It's just been the general impression that we've</p> <p>17 received. So 65 sounds good to me personally. Whether</p> <p>18 it sounds good to our office -- our office has not</p> <p>19 evaluated the success or failure of the mobile program.</p> <p>20 Q. Do you know how many -- and I think you just</p> <p>21 answered this. But do you know how many EICs were issued</p> <p>22 out of mobile EIC units in 2014?</p> <p>23 A. I do not.</p> <p>24 Q. Why have you not requested this information of</p> <p>25 DPS?</p>
<p style="text-align: right;">122</p> <p>1 A. The mobile EIC Phase 2 program went from</p> <p>2 September to the week after the election, which I believe</p> <p>3 was November 12th. We could have stopped it</p> <p>4 November 10th or so. I'm not sure. But anyway, that --</p> <p>5 that was Phase 1 of Phase 2, and then we started the</p> <p>6 second phase of Phase 2 program mobile units in</p> <p>7 January of 2014, so there was a gap from the middle of</p> <p>8 November and December of 2013 before the mobile units</p> <p>9 involved in Phase 2 began again.</p> <p>10 Q. When did they start up again in 2014?</p> <p>11 A. January.</p> <p>12 Q. January. At the beginning of the month?</p> <p>13 A. I don't believe so. It was more like the</p> <p>14 second or third week.</p> <p>15 Q. So assuming that this document, Exhibit 16, is</p> <p>16 accurate and 65 EICs were issued from mobile EICs,</p> <p>17 whatever DL mobile means, what is your assessment of the</p> <p>18 mobile EIC unit program as of February 3rd? Was it</p> <p>19 successful?</p> <p>20 A. I don't believe that our office has made an</p> <p>21 assessment of the success or failure of this program.</p> <p>22 I would say, speaking personally, that 65 sounds like</p> <p>23 a higher number than I thought it was, so I'm -- I'm</p> <p>24 pleased to know that number.</p> <p>25 Q. And what was your expected number of issuances?</p>	<p style="text-align: right;">124</p> <p>1 A. Because the -- the responsibility for issuing</p> <p>2 election identification certificates rests with DPS.</p> <p>3 That is not something that the legislature has made our</p> <p>4 responsibility and it's not our responsibility other</p> <p>5 than, you know, human curiosity to know these things. So</p> <p>6 DPS doesn't need to report to us how they're fulfilling</p> <p>7 their statutory mandate. That's just -- that's just not</p> <p>8 required.</p> <p>9 Q. Without understanding how many EICs have been</p> <p>10 issued out of the mobile EIC units is it possible for you</p> <p>11 to figure out how to improve the program or do you</p> <p>12 believe you need that data?</p> <p>13 A. Well, certainly at some point we will need to</p> <p>14 sort of reevaluate, reassess, figure out what worked,</p> <p>15 what didn't work, but we're not at that point yet. We</p> <p>16 are currently in a different type of Phase 2 where we are</p> <p>17 trying to work with counties who are having events where</p> <p>18 people will be at the events and making sure that we have</p> <p>19 an invitation and the opportunity to participate in those</p> <p>20 events, and so we're going at it from a different</p> <p>21 direction right now.</p> <p>22 Q. Is there a point in time at which you will</p> <p>23 evaluate the -- you know, the success of the mobile EIC</p> <p>24 program?</p> <p>25 A. Certainly.</p>

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<p style="text-align: right;">125</p> <p>1 Q. When will that be?</p> <p>2 A. Probably after the November 2014 election.</p> <p>3 Q. Do you see, turning your attention back to</p> <p>4 Exhibit 16, that there is a list of invalid applications</p> <p>5 at page TEX I.R.000415?</p> <p>6 A. Yes.</p> <p>7 Q. And do you see that a number of those</p> <p>8 individuals did not have sufficient supporting</p> <p>9 documentation?</p> <p>10 A. I do see that, yes, ma'am.</p> <p>11 Q. Are you aware of whether DPS or anyone within</p> <p>12 the state government of Texas has contacted these voters</p> <p>13 to assist them in applying for an EIC successfully and</p> <p>14 overcoming any of these challenges?</p> <p>15 A. I do not know. Certainly our office has not</p> <p>16 made any effort because we didn't know who they were or</p> <p>17 where they were.</p> <p>18 Q. Do you plan to operate -- to work with DPS and</p> <p>19 the counties to operate or assist them in operating</p> <p>20 mobile EIC units in May 2014?</p> <p>21 A. For Phase 2 or for Phase 3?</p> <p>22 Q. For Phase 2 and Phase 3.</p> <p>23 A. Well, for Phase --</p> <p>24 Q. For either.</p> <p>25 A. For Phase 3, we're out of the loop on that</p>	<p style="text-align: right;">127</p> <p>1 government offices; is that correct?</p> <p>2 A. Right. We're trying to -- to see about getting</p> <p>3 the mobile EIC possibility or availability to the voters</p> <p>4 as much as we can and not waiting for them to come to us.</p> <p>5 Q. What is the status of these plans for</p> <p>6 event-based?</p> <p>7 A. I am not sure of the current status. There's</p> <p>8 a lady in my office, Louri O'Leary, who's our point</p> <p>9 person with DPS and with the counties on that so that I'm</p> <p>10 not making all the calls now, so I don't know what is</p> <p>11 currently scheduled, but I do know that she is working on</p> <p>12 that program and that she's made contacts and she's got a</p> <p>13 schedule.</p> <p>14 Q. Is there a plan in place, a written plan, to</p> <p>15 put this program together?</p> <p>16 A. I don't know. I don't know what you would</p> <p>17 consider a written plan. I don't believe so, no, ma'am.</p> <p>18 Q. Is there -- are these targeted in counties that</p> <p>19 don't have driver license offices or --</p> <p>20 A. No, ma'am. The Phase 2 program has never been</p> <p>21 targeted to counties that didn't have driver license</p> <p>22 offices. That's Phase 3.</p> <p>23 Q. Okay. So this is just a Phase 2 program as it</p> <p>24 pertains -- and by Phase 2, I mean that bucket of</p> <p>25 counties, the rural counties and the ones with high</p>
<p style="text-align: right;">126</p> <p>1 unless DPS wants us to assist with anything. For Phase 2</p> <p>2 we are currently -- we have mobile EIC units out.</p> <p>3 Q. They're currently operating in -- currently</p> <p>4 presently operating in advance of the May 27th election?</p> <p>5 A. That's right.</p> <p>6 Q. And do you plan to operate those units in</p> <p>7 advance of the November 2014 election?</p> <p>8 A. Yes, ma'am.</p> <p>9 Q. Do you have any specific plans or changes or --</p> <p>10 A. As I said, we're trying to go more toward an</p> <p>11 invitation model and more of an event-driven model so</p> <p>12 that the counties, as they have an event that voters will</p> <p>13 be present at, invite us to come.</p> <p>14 Q. I see. So what exactly does that mean, more of</p> <p>15 an event model? Is that a voter registration drive? Is</p> <p>16 that a --</p> <p>17 A. No, it could be county fairs, it could be</p> <p>18 watermelon festivals, it could be whatever they have at</p> <p>19 which they believe it would be useful to have the</p> <p>20 opportunity for election identification certificates to</p> <p>21 be available to their -- to their citizens.</p> <p>22 Q. I see. So these are county -- county fairs,</p> <p>23 county this and that?</p> <p>24 A. Events.</p> <p>25 Q. Events, okay. As opposed to having them in</p>	<p style="text-align: right;">128</p> <p>1 concentrations of people who may not have an appropriate</p> <p>2 ID. Is that correct?</p> <p>3 A. That -- that's part of it, but now we've</p> <p>4 introduced a new variable with regard to invitations and</p> <p>5 events.</p> <p>6 Q. And invitations and events, this program you</p> <p>7 just testified about, is this in lieu of mobile EIC units</p> <p>8 in government offices or in addition?</p> <p>9 A. It's another factor to consider when we're</p> <p>10 talking about where to send the EIC units. Our goal is</p> <p>11 to have more events and more invitations because we</p> <p>12 believe that that's a more effective way to reach voters</p> <p>13 who might need an ID. For instance, the city of Trinity</p> <p>14 had a collection of senior citizens who needed election</p> <p>15 identification certificates, and they wanted us to bring</p> <p>16 a mobile EIC unit to Trinity, the city of Trinity.</p> <p>17 Trinity County, in their county seat, has accepted the</p> <p>18 training. They have a permanent mobile EIC unit at the</p> <p>19 county seat, but the city of Trinity felt like that was</p> <p>20 too far for their folks to drive, so they wanted us to</p> <p>21 come, so we made available a mobile EIC unit for them --</p> <p>22 I don't know if it was one or two days -- and we</p> <p>23 fulfilled that request, and I believe EICs were issued at</p> <p>24 that event. So that's the kind of model that we're</p> <p>25 talking about. If -- if the counties or cities within</p>



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<p style="text-align: right;">129</p> <p>1 those counties have a population of voters that feel like</p> <p>2 they want an EIC unit, we want to be there.</p> <p>3 Now, in addition to that we want to make</p> <p>4 sure that the rest of the machines are not just sitting</p> <p>5 idle, so we'll continue inviting ourselves, but we would</p> <p>6 prefer it to be primarily event-driven and</p> <p>7 invitation-driven for 2014.</p> <p>8 Q. Thank you. And you have plans in place for</p> <p>9 November of 2014 for these event-driven collaborations</p> <p>10 with counties, but as you sit here today can you</p> <p>11 guarantee that -- that this collaboration will happen in</p> <p>12 particular counties?</p> <p>13 MR. KEISTER: Object, calls for</p> <p>14 speculation.</p> <p>15 A. Right. If you're asking if we have anything</p> <p>16 scheduled, I don't know. I'd have to talk to Louri and</p> <p>17 see what -- what's planned for down the road. I don't</p> <p>18 know how far in advance she's got a schedule working. If</p> <p>19 you're talking about making sure the counties know that</p> <p>20 we're interested in coming to their events, then yes,</p> <p>21 we've done that already. We'll continue to do it as we</p> <p>22 go through the summer.</p> <p>23 Q. And the model will be more at the request of</p> <p>24 the county at least with regard to events; is that</p> <p>25 correct?</p>	<p style="text-align: right;">131</p> <p>1 Saturday hours or did you have any input whatsoever?</p> <p>2 A. They -- they decided the offices that were</p> <p>3 going to be open and how many to open.</p> <p>4 Q. Is there -- to your knowledge is there any</p> <p>5 legal requirement that DPS offer EICs during Saturday</p> <p>6 hours?</p> <p>7 A. To my understanding there is not such a</p> <p>8 requirement.</p> <p>9 Q. And so DPS has offered EICs and Saturday hours,</p> <p>10 but it may decide not to do so in the future; is that</p> <p>11 your understanding?</p> <p>12 MR. KEISTER: Objection, calls for</p> <p>13 speculation.</p> <p>14 A. I don't know how their processes work.</p> <p>15 MS. WESTFALL: Can you mark this as</p> <p>16 Exhibit 17.</p> <p>17 (Exhibit No. 17 marked)</p> <p>18 Q. I'm handing you what's been marked as</p> <p>19 Exhibit 17. Have you seen this document before?</p> <p>20 A. I don't know if I've seen this version of this</p> <p>21 document, but I have seen maybe a press release mock-up</p> <p>22 of it.</p> <p>23 Q. Do you know how -- first of all, as to</p> <p>24 Exhibit 17, do you know if this is an accurate list of</p> <p>25 the offices that offered Saturday hours in 2013?</p>
<p style="text-align: right;">130</p> <p>1 A. That's right.</p> <p>2 Q. It will be in the discretion of the counties;</p> <p>3 is that right?</p> <p>4 A. That's right.</p> <p>5 Q. Were you involved in the decision that certain</p> <p>6 driver license offices have Saturday hours for the</p> <p>7 issuance of EICs in October 2013?</p> <p>8 A. Our office was not involved in that decision</p> <p>9 other than it was part of a process that we've talked</p> <p>10 about with regard to El Paso and Bruce Elfant's letter</p> <p>11 that it would be useful to have non-business hour</p> <p>12 availability of EICs. So we had that discussion with --</p> <p>13 with DPS, and I believe their response to that was to</p> <p>14 have Saturday hours at the most busy offices.</p> <p>15 Q. But that -- was that the extent of the</p> <p>16 Secretary of State's involvement in that particular</p> <p>17 program?</p> <p>18 A. Exactly. And I don't know if it was</p> <p>19 involvement or not. I'm just saying it could have had</p> <p>20 a role to play in that decision. I don't know.</p> <p>21 Q. Did you have conversations with DPS yourself</p> <p>22 about Saturday hours?</p> <p>23 A. We did. They told us what they were going to</p> <p>24 do with regard to Saturday hours.</p> <p>25 Q. Did they decide the offices where to have</p>	<p style="text-align: right;">132</p> <p>1 A. I -- I don't know if it's accurate or not.</p> <p>2 Q. Do you know how these locations were</p> <p>3 identified?</p> <p>4 A. No.</p> <p>5 Q. Do you know who made the decision about what</p> <p>6 offices would have Saturday hours?</p> <p>7 A. I do not. I know that Joe Peters and</p> <p>8 Tony Rodriguez and Duke Bodisch told us about it.</p> <p>9 Q. Was this a temporary program to have Saturday</p> <p>10 hours to offer EICs in advance of the November 13th</p> <p>11 election?</p> <p>12 A. It was for those Saturdays that were between</p> <p>13 the announcement and the election.</p> <p>14 Q. Do you know whether DPS was cooperative --</p> <p>15 well, I believe you testified DPS made the decision to</p> <p>16 have Saturday hours, but was DPS cooperative in executing</p> <p>17 this program to operate EICs during Saturday hours?</p> <p>18 A. I don't know what that means.</p> <p>19 Q. Was there any resistance on the part of DPS to</p> <p>20 offering -- providing Saturday hours?</p> <p>21 A. I don't know.</p> <p>22 MS. WESTFALL: Could you mark this as 18.</p> <p>23 (Exhibit No. 18 marked)</p> <p>24 Q. You've been handed what's been marked as</p> <p>25 Exhibit 18. Have you ever seen this document before?</p>

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34 (Pages 133 to 136)

<p style="text-align: right;">133</p> <p>1 <b>A. No.</b></p> <p>2 Q. Can you take a look at just the first page, the</p> <p>3 e-mail on the first page, and let me know when you've had</p> <p>4 a chance to look at it?</p> <p>5 <b>A. Sure. (Reviewing document) Okay.</b></p> <p>6 Q. Do you see that Mr. Rodriguez is the author of</p> <p>7 the e-mail?</p> <p>8 <b>A. I see that.</b></p> <p>9 Q. Do you see that Mr. Rodriguez asks that state</p> <p>10 troopers -- or troopers be present at the driver license</p> <p>11 offices for the Saturday hours?</p> <p>12 <b>A. I do.</b></p> <p>13 Q. Do you know why he made that suggestion?</p> <p>14 <b>A. I'm not sure I understand the question.</b></p> <p>15 Q. Do you know why he asked the -- the recipients</p> <p>16 of the e-mail to provide troopers during Saturday hours</p> <p>17 at the DPS offices?</p> <p>18 <b>A. Specifically DPS troopers and not just clerks?</b></p> <p>19 Q. Well, he says troopers, does he not, in the</p> <p>20 second paragraph?</p> <p>21 <b>A. Yeah. I don't know DPS' policy on who has to</b></p> <p>22 <b>be present when an office is open. That's -- that's a</b></p> <p>23 <b>DPS question, so I don't know. If you're specifically</b></p> <p>24 <b>asking if there's a reason to have troopers in the office</b></p> <p>25 <b>on a Saturday, I -- that is -- I don't know.</b></p>	<p style="text-align: right;">135</p> <p>1 <b>open.</b></p> <p>2 Q. And was that at your request, that the Saturday</p> <p>3 hours would be initiated?</p> <p>4 <b>A. No. I mean, it -- we were definitely of the</b></p> <p>5 <b>opinion that off hours should be offered. I don't know</b></p> <p>6 <b>if that played a role in this or not.</b></p> <p>7 Q. Do you know how many EICs were issued during</p> <p>8 Saturday hours in October 2013?</p> <p>9 <b>A. I do not.</b></p> <p>10 Q. Did you track that at all?</p> <p>11 <b>A. No, ma'am.</b></p> <p>12 Q. Do you know, for example, on one Saturday at</p> <p>13 nine offices only two were issued? Are you aware of that</p> <p>14 fact?</p> <p>15 <b>A. No. We could have been told that somewhere</b></p> <p>16 <b>along the way, but as I sit here today I don't remember</b></p> <p>17 <b>it.</b></p> <p>18 Q. Have you made any assessment of the success of</p> <p>19 Saturday hours to offer EICs at driver license offices?</p> <p>20 <b>A. No, ma'am, our office has not made any</b></p> <p>21 <b>assessment of Saturday hours.</b></p> <p>22 Q. Do you know whether Saturday hours will be</p> <p>23 offered in February 2014 at driver license offices?</p> <p>24 <b>A. I don't know.</b></p> <p>25 Q. And have you worked with -- I believe you</p>
<p style="text-align: right;">134</p> <p>1 Q. And do you see that -- in the first paragraph</p> <p>2 that his thought is that if there's no demand for EICs</p> <p>3 they can make the case for stopping having Saturday</p> <p>4 hours?</p> <p>5 <b>A. That's what he says.</b></p> <p>6 Q. Why do you think he said that?</p> <p>7 <b>MR. KEISTER: Objection, calls for</b></p> <p>8 <b>speculation.</b></p> <p>9 <b>A. I don't know why he said it. I don't know why</b></p> <p>10 <b>he said it. I know that DPS was having to pay overtime</b></p> <p>11 <b>for these employees.</b></p> <p>12 Q. So you think DPS was not enthusiastic about the</p> <p>13 payroll involved in the Saturday hours for the EIC</p> <p>14 program? Is that your sense?</p> <p>15 <b>A. I have no idea if they --</b></p> <p>16 <b>MR. KEISTER: Objection, calls for --</b></p> <p>17 <b>calls for speculation.</b></p> <p>18 <b>A. I have no idea if they were enthusiastic or</b></p> <p>19 <b>not.</b></p> <p>20 Q. Do you see in the first sentence that it</p> <p>21 indicates that the Secretary of State's Office is</p> <p>22 targeting 13 counties?</p> <p>23 <b>A. It looks like he took our list from the</b></p> <p>24 <b>July '13 matching exercise, picked the top 13 counties</b></p> <p>25 <b>and decided those would be the offices that would be</b></p>	<p style="text-align: right;">136</p> <p>1 testified you worked with DPS to offer EICs through</p> <p>2 mobile EIC units in February 2014, correct?</p> <p>3 <b>A. Our office did. It would have been Louri at</b></p> <p>4 <b>that point.</b></p> <p>5 Q. Have you made any changes in your program in</p> <p>6 2014 from 2013 for the mobile EIC units?</p> <p>7 <b>A. As I said, we're trying to have more of the</b></p> <p>8 <b>units placed with events and invitations.</b></p> <p>9 Q. That is for the future. I guess just limiting</p> <p>10 the EIC mobile unit as it pertains to February, in</p> <p>11 advance of the March 2014 election, have you made any</p> <p>12 changes from October 2013?</p> <p>13 <b>A. Yes. The event-driven invitation model is the</b></p> <p>14 <b>2014, not just for the November election, but also for</b></p> <p>15 <b>the primary.</b></p> <p>16 Q. I see. Any other changes?</p> <p>17 <b>A. No, ma'am.</b></p> <p>18 Q. And I believe you testified earlier that the</p> <p>19 Secretary of State is staffing some of the mobile units?</p> <p>20 <b>A. That is correct.</b></p> <p>21 Q. And that is for this month, February 2014?</p> <p>22 <b>A. This month is April.</b></p> <p>23 Q. I'm in the wrong -- I'm sorry. I'm saying</p> <p>24 February. I -- I'm thinking about the May election. My</p> <p>25 apologies. I'm messing up the record.</p>

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35 (Pages 137 to 140)

<p style="text-align: right;">137</p> <p>1 MS. WESTFALL: Strike that.</p> <p>2 Q. Okay. So you -- okay. The Secretary of</p> <p>3 State's Office staffed in February in advance of the</p> <p>4 March 2014 election --</p> <p>5 A. We did.</p> <p>6 Q. -- some mobile offices. Which offices?</p> <p>7 A. I don't know how many. There were quite a few.</p> <p>8 My -- my office has the numbers if you need them. We've</p> <p>9 got the schedule and we've got the numbers of who went</p> <p>10 where. But it was -- it was quite a few of them.</p> <p>11 Q. Why did that occur?</p> <p>12 A. I think I've answered this question. Our</p> <p>13 office and DPS thought it would be a useful thing to have</p> <p>14 Secretary of State employees involved in the process of</p> <p>15 issuing election identification certificates. They</p> <p>16 offered us the training. We took the training and now we</p> <p>17 have staff with DPS. The -- the -- the rollout in</p> <p>18 February and before the March primary was one DPS person,</p> <p>19 one Secretary of State person for each of the mobile</p> <p>20 units.</p> <p>21 Q. Why did you decide to agree to have your staff</p> <p>22 play that role?</p> <p>23 A. Because we can.</p> <p>24 Q. As of February, the beginning of February, were</p> <p>25 there about 33 counties in Texas without a driver license</p>	<p style="text-align: right;">139</p> <p>1 Q. So you think this e-mail is inaccurate?</p> <p>2 A. No.</p> <p>3 Q. Or doesn't reflect that?</p> <p>4 A. I don't think it reflects that.</p> <p>5 Q. Why does it not reflect that?</p> <p>6 A. I think it reflects that the -- the sites were</p> <p>7 given with the five days notice, we've -- we've stretched</p> <p>8 out the required minimum notice to five days, and that if</p> <p>9 there's some sort of problem, then the EIC units would be</p> <p>10 rescheduled.</p> <p>11 Q. And you see that she -- this e-mail was sent on</p> <p>12 February 14th?</p> <p>13 A. I do.</p> <p>14 Q. And she was trying to confirm locations within</p> <p>15 two days, is that right, by the 16th?</p> <p>16 A. Right. But that wasn't when they were going to</p> <p>17 start.</p> <p>18 Q. And when --</p> <p>19 A. That's just when she wanted to know for sure</p> <p>20 whether it was a go or no go.</p> <p>21 Q. When were they going to start?</p> <p>22 A. I don't know. I would have to see the</p> <p>23 schedule. It was sometime after Sunday the 16th.</p> <p>24 Q. But it's your testimony today there were no</p> <p>25 concerns about no adequate notice in February 2014 for</p>
<p style="text-align: right;">138</p> <p>1 office or permanent EIC program? Does that sound right?</p> <p>2 A. That sounds like it could be correct. I don't</p> <p>3 know the precise number.</p> <p>4 MS. WESTFALL: Bear with me for one</p> <p>5 moment. Let's go off the record for one second while</p> <p>6 I get my exhibits together.</p> <p>7 (Off the record 11:57 a.m. to 11:59 a.m.)</p> <p>8 (Exhibit No. 19 marked)</p> <p>9 BY MS. WESTFALL:</p> <p>10 Q. I'm handing you what's been marked as</p> <p>11 Exhibit 19. Have you seen this before?</p> <p>12 A. I don't believe I have, no, ma'am.</p> <p>13 Q. Do you see it's from Louri O'Leary, whose name</p> <p>14 I think you just mentioned, concerning some sites in</p> <p>15 February 2014 for a mobile EIC?</p> <p>16 A. Yes.</p> <p>17 Q. And do you see that Ms. O'Leary is talking</p> <p>18 about tight deadlines again and confirming locations</p> <p>19 again? Do you see that?</p> <p>20 A. I do.</p> <p>21 Q. Were there continued concerns about securing</p> <p>22 sites with adequate notice in February 2014?</p> <p>23 A. No, ma'am.</p> <p>24 Q. There were no concerns?</p> <p>25 A. No.</p>	<p style="text-align: right;">140</p> <p>1 these locations?</p> <p>2 A. No, ma'am, there was no concern.</p> <p>3 Q. In February 2014 did you -- did your office</p> <p>4 have any involvement in the Saturday hours of where EICs</p> <p>5 would be offered?</p> <p>6 A. No, ma'am. Louri participates in a daily</p> <p>7 conference call with DPS, so she probably knew about it,</p> <p>8 but it wasn't anything that we were driving.</p> <p>9 Q. Based on -- we talked about this a little bit</p> <p>10 earlier. But based on the number of applications that</p> <p>11 you've received for EICs do you believe this program has</p> <p>12 been successful?</p> <p>13 A. We haven't received any applications for EICs.</p> <p>14 Q. Based on the number of applications that have</p> <p>15 been submitted do you believe this program has been</p> <p>16 successful?</p> <p>17 A. I don't know for sure how many applications</p> <p>18 have been submitted. I know what you showed me before,</p> <p>19 and I've said that we're going to make an assessment</p> <p>20 probably at the end of the year after the November</p> <p>21 election about whether or not this program has been</p> <p>22 successful.</p> <p>23 Q. So your testimony today is you do not know</p> <p>24 whether the EIC program has been successful or not; is</p> <p>25 that correct?</p>

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36 (Pages 141 to 144)

<p style="text-align: right;">141</p> <p>1 A. I don't know what you mean by EIC program. If</p> <p>2 you mean Phase 2 mobile unit program, it -- I don't know</p> <p>3 is the answer, yes.</p> <p>4 Q. I guess overall do you think the EIC program,</p> <p>5 making it available to persons who otherwise do not have</p> <p>6 acceptable photo ID under SB 14, do you think it's been</p> <p>7 successful?</p> <p>8 A. I don't know.</p> <p>9 Q. And I will represent to you that the</p> <p>10 defendants' interrogatory responses indicate in the</p> <p>11 responses themselves that as of February 3, 2014, 167</p> <p>12 applications for EICs had been received. Does that sound</p> <p>13 accurate from your standpoint?</p> <p>14 A. I know that the number is more than that now.</p> <p>15 Q. Does it sound accurate as of February 3, 2014?</p> <p>16 A. I would have thought it would be closer to 200</p> <p>17 as of February.</p> <p>18 Q. And based on that number do you have any</p> <p>19 assessment as to whether making EICs available to the</p> <p>20 public has been successful or not?</p> <p>21 MR. KEISTER: Objection, asked and</p> <p>22 answered, and since he's already stated that they haven't</p> <p>23 made an assessment, it would be speculation, unless</p> <p>24 you're asking him personally.</p> <p>25 Q. You may answer.</p>	<p style="text-align: right;">143</p> <p>1 number of EIC applications to comply with any statutory</p> <p>2 mandate. I do know that we want to make them as widely</p> <p>3 available as we can make them.</p> <p>4 Q. Have you taken any steps to ensure that</p> <p>5 unregistered eligible voters who lack SB 14 ID obtain an</p> <p>6 EIC?</p> <p>7 A. No, ma'am.</p> <p>8 Q. Have you given any consideration to that issue</p> <p>9 at all?</p> <p>10 A. No, ma'am. There -- there -- we just had an</p> <p>11 interim elections committee hearing, and one of the</p> <p>12 things that was under discussion was interstate</p> <p>13 crosscheck programs between voter lists and doing list</p> <p>14 maintenance. One of the things that we talked about at</p> <p>15 the interim committee was the ERIC program. The ERIC</p> <p>16 program has as a component offering the opportunity to</p> <p>17 currently nonregistered but eligible citizens the</p> <p>18 opportunity to register to vote. I don't know what the</p> <p>19 legislature will decide with regard to participating in</p> <p>20 that program or not. That's just one of the things that</p> <p>21 we talked about at the interim elections committee</p> <p>22 hearing. And that is the only program that I know of</p> <p>23 that reaches out to currently unregistered voters.</p> <p>24 Q. Could you describe that program?</p> <p>25 A. ERIC? I don't know if I know enough about it</p>
<p style="text-align: right;">142</p> <p>1 A. As I said, we haven't made an assessment of the</p> <p>2 success or failure of this program yet. That'll probably</p> <p>3 occur after the November 2014 election.</p> <p>4 Q. Are you -- is your office trying to increase</p> <p>5 the number of EIC applications?</p> <p>6 A. It is not our role to increase the number of</p> <p>7 EIC applications. It is our role to do whatever we can</p> <p>8 do to make EICs available to voters who need an</p> <p>9 acceptable form of ID to vote. So I don't know if there</p> <p>10 is a way to measure the success or failure of that other</p> <p>11 than we provided the opportunity, and it is our goal to</p> <p>12 provide the opportunity as widely as we can.</p> <p>13 Q. And I believe you testified before that there's</p> <p>14 no legal obligation on the part of the Secretary of State</p> <p>15 to increase the number of applications of EICs. Is that</p> <p>16 right?</p> <p>17 A. The EIC application process is not ours, it's</p> <p>18 the DPS'.</p> <p>19 Q. And is it -- I know your testimony is that the</p> <p>20 Secretary of State's Office does not have an obligation</p> <p>21 to increase the number of EIC applications. Is it the</p> <p>22 responsibility of any other entity, state or local, in</p> <p>23 the state of Texas to increase the number of EIC</p> <p>24 applications?</p> <p>25 A. I don't know of any requirement for any minimum</p>	<p style="text-align: right;">144</p> <p>1 to describe it.</p> <p>2 Q. That's okay then. I don't want you to testify</p> <p>3 about things you don't know about, so that's okay.</p> <p>4 Could county election officials issue an</p> <p>5 EIC when a voter registers to vote? Would it be possible</p> <p>6 for the county election officials to do that?</p> <p>7 A. The counties who have accepted the training and</p> <p>8 have the equipment, yes.</p> <p>9 Q. It could all be within one -- a one-step</p> <p>10 process?</p> <p>11 A. It wouldn't be a one-step process, it would be</p> <p>12 a two-step process. But yes. One of the requirements to</p> <p>13 receive an election identification certificate is either</p> <p>14 that you are already registered to vote or you submit an</p> <p>15 application to register to vote contemporaneously with</p> <p>16 your application for the EIC. So in some of the counties</p> <p>17 in Phase 3 I believe the voter registrar is where the EIC</p> <p>18 equipment is, and so if -- if a voter registers to vote</p> <p>19 and needs an ID, there is the opportunity to get both at</p> <p>20 the same visit to the voter registrar's office.</p> <p>21 Q. To your knowledge are any counties presently</p> <p>22 doing that?</p> <p>23 A. Yes.</p> <p>24 Q. Which counties?</p> <p>25 A. I don't know. There's 40 or so.</p>

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37 (Pages 145 to 148)

<p style="text-align: right;">145</p> <p>1 Q. They're all -- so all of those 40 counties in  2 which there isn't a driver license and which they're  3 participating in Phase 3, those counties are issuing the  4 EICs from the county election office; is that correct?  5 A. Well --  6 Q. Or elsewhere?  7 A. Yeah, the county election office is -- is a --  8 is a moving target, so I don't know what you mean when  9 you say that. We have -- the county clerks in a lot of  10 counties run the elections. The voter registrar is  11 usually the tax assessor-collector. There are some  12 counties where those roles are reversed and there's some  13 counties where one or both -- one of those will have both  14 roles. There are other counties, about 100 of them,  15 where there's an election administrator who does both the  16 election piece and the voter registrar piece.  17 So I don't know which counties you're  18 talking about, but with regard to the counties that don't  19 have a driver license office that do have the EIC  20 available, I am aware of Grimes County. Becky Duff is  21 the elections administrator over there, and she issues  22 EICs. As far as I know she's the only county with a  23 permanent location who's actually issued an EIC, but  24 she's very pleased that she's done three of them.  25 Q. Thank you. Now I want to turn to a different</p>	<p style="text-align: right;">147</p> <p>1 law became enforceable. And so I think that we had  2 previously issued the disability exemption advisory. You  3 know, I think the advisory also had stuff with regard to  4 religious exemption and disaster declaration exemption as  5 well, but the primary purpose of that advisory was the  6 disability exemption.  7 Q. Is the September 13, 2013, FAQs the most  8 up-to-date piece of information about how the disability  9 exemption works or you're saying the advisory is more  10 accurate or up to date or are they both?  11 A. You're misunderstanding my point. The  12 advisories set forth the policy, the procedure, this is  13 how you do it. The FAQ answers questions with regard to  14 that policy and that procedure. So my point is that they  15 work together to -- to talk about disability exemption  16 procedure.  17 Q. Got it. If a voter wants to obtain a  18 disability exemption must the voter appear at the county  19 registrar or the election official in person or can this  20 be obtained in other means?  21 A. They can mail it in.  22 Q. They can mail in their original documentation  23 certifying the disability to the election official; is  24 that correct?  25 A. No, they can mail in a copy.</p>
<p style="text-align: right;">146</p> <p>1 topic, the disability exemption.  2 MS. WESTFALL: Could you mark this as  3 Exhibit 20.  4 (Exhibit No. 20 marked)  5 Q. I'm handing you what's been marked as  6 Exhibit 20.  7 A. Yes.  8 Q. Do you recognize this document?  9 A. Yes, I do.  10 Q. And what is it?  11 A. This is some FAQs that we prepared for county  12 election officials with regard to implementing photo ID  13 SB 14s for the November 2013 election.  14 Q. And does it set forth various procedures  15 related to the disability exemption?  16 A. Well, this -- this is sort of a response  17 document to input that we receive from the counties,  18 so -- the nature of a frequently asked questions document  19 is to answer frequently asked questions, and so if  20 there's some disability questions in here, then that is a  21 response to ones we had received. The -- the disability  22 exemption advisory came out earlier in the year, shortly  23 after the Shelby County decision on June 25th of 2013.  24 We might have issued that advisory as early as June 26th.  25 I think that it was pretty much ready to go if -- if the</p>	<p style="text-align: right;">148</p> <p>1 Q. Mail in a copy. That's right. But they can do  2 it by mail?  3 A. They don't need to mail in their original  4 disability documents.  5 Q. Okay.  6 A. They need to mail in a copy or present a copy  7 in person.  8 Q. What sort of documents from the Social Security  9 Administration or the Veterans Administration will  10 suffice?  11 A. You know, I don't know what documents they  12 issue. It's our belief in the Secretary of State's  13 Office that there is a letter at the end of a process  14 where someone gets evaluated that will show a disability  15 rating of X percent. With regard to the Social Security  16 Administration, if there's any disability at all they're  17 qualified for the disability exemption. With regard to  18 the Veterans Administration the disability rating has to  19 be more than 50 percent. So I don't know what form that  20 notice takes to the voter, but whatever they get, they  21 present a copy of it to the election officials.  22 Q. Thank you.  23 MS. WESTFALL: Can you mark this as 21.  24 (Exhibit No. 21 marked)  25 Q. I'm handing you what's been marked as 21. Do</p>



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<p style="text-align: right;">149</p> <p>1 you recognize this document?</p> <p>2 <b>A. I do.</b></p> <p>3 Q. What is it?</p> <p>4 <b>A. This is the application form -- the request</b></p> <p>5 <b>form that we came up with for requesting a disability</b></p> <p>6 <b>exemption.</b></p> <p>7 Q. Do you see that a voter must indicate that the</p> <p>8 voter does not have another acceptable form of SB 14</p> <p>9 qualifying ID in order to get this exemption?</p> <p>10 <b>A. I believe that's the statutory requirement.</b></p> <p>11 Q. Is it? Is that the source of the obligation?</p> <p>12 <b>A. I believe so. Now I don't remember where it</b></p> <p>13 <b>is.</b></p> <p>14 MR. KEISTER: I don't think she asked you</p> <p>15 to find it. If she wants you to, that's fine.</p> <p>16 MS. WESTFALL: For the record, Mr. Ingram</p> <p>17 is preparing -- is looking at the Election Code.</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. What is the source of the obligation that</p> <p>20 voters say they don't have any other forms of ID?</p> <p>21 <b>A. It is Election Code 13.002, subpart (i),</b></p> <p>22 <b>subpart 2.</b></p> <p>23 Q. And this is SB -- this is SB 14 as codified?</p> <p>24 <b>A. I believe so.</b></p> <p>25 Q. If a voter obtains a disability exemption,</p>	<p style="text-align: right;">151</p> <p>1 <b>a photo ID, but they still have to show an acceptable</b></p> <p>2 <b>form of ID under SB 14.</b></p> <p>3 Q. So your understanding is that the purpose is to</p> <p>4 show identification and it must have an E, the voter</p> <p>5 registration certificate? That's your understanding?</p> <p>6 <b>A. That's right.</b></p> <p>7 <b>Q. Is there any time period by which a county</b></p> <p>8 <b>official must process an application for a disability</b></p> <p>9 <b>exemption?</b></p> <p>10 <b>A. I don't remember what our advisory says. You</b></p> <p>11 <b>know, obviously they need to do it.</b></p> <p>12 <b>Q. Is there any legal requirement under the code</b></p> <p>13 <b>or regulation other than the advisory you just discussed?</b></p> <p>14 <b>A. I don't think that we've actually put it in the</b></p> <p>15 <b>rule, so I don't know if there's a time requirement for a</b></p> <p>16 <b>county to act on the disability exemption.</b></p> <p>17 <b>Q. Is it true, therefore, that the voter is not</b></p> <p>18 <b>guaranteed that her application for a disability</b></p> <p>19 <b>exemption will be processed in time for an election?</b></p> <p>20 <b>There's no -- there's no guarantee?</b></p> <p>21 <b>A. I don't know what that means, there's no</b></p> <p>22 <b>guarantee.</b></p> <p>23 <b>Q. There's no certainty if a voter applies at a</b></p> <p>24 <b>certain date that the exemption will be granted before an</b></p> <p>25 <b>election -- upcoming election by law?</b></p>
<p style="text-align: right;">150</p> <p>1 appears to vote and is not -- and is listed on the list</p> <p>2 of voters as exempted, has an E in the list of registered</p> <p>3 voters, but does not have the card showing an E, the</p> <p>4 voter registration certificate, that voter must vote by</p> <p>5 provisional ballot, right?</p> <p>6 <b>A. That's right.</b></p> <p>7 Q. And what is the purpose of that requirement as</p> <p>8 you understand it?</p> <p>9 <b>A. Because they have to identify themselves as the</b></p> <p>10 <b>voter and they at least need their certificate with the E</b></p> <p>11 <b>on it.</b></p> <p>12 Q. But if they had an old certificate that didn't</p> <p>13 have an E on it, why wouldn't that suffice to prove the</p> <p>14 identity of the voter provided the voter has an E in the</p> <p>15 poll book?</p> <p>16 <b>A. An old certificate is not an acceptable form of</b></p> <p>17 <b>identification under 13.002(i) or 63.0101.</b></p> <p>18 Q. Isn't the purpose of the disability exemption</p> <p>19 to exempt certain people with disabilities from the SB 14</p> <p>20 identification requirements?</p> <p>21 <b>A. No, ma'am.</b></p> <p>22 Q. What is the purpose of the disability</p> <p>23 exemption?</p> <p>24 <b>A. The purpose of the disability exemption is to</b></p> <p>25 <b>exempt certain people from the requirement that they show</b></p>	<p style="text-align: right;">152</p> <p>1 <b>A. Again, what's the certain date? I mean, I</b></p> <p>2 <b>don't understand the question. There are -- there are</b></p> <p>3 <b>county election officials all over this state who are</b></p> <p>4 <b>very diligent and care a lot about what they do. There</b></p> <p>5 <b>are also a lot of people who register to vote at the last</b></p> <p>6 <b>minute, so there is a requirement that voters be</b></p> <p>7 <b>registered 30 days before an election. There is a</b></p> <p>8 <b>requirement that if you're going to have an election</b></p> <p>9 <b>identification -- or a disability exemption that you have</b></p> <p>10 <b>a card with an E on it. However, sometimes counties get</b></p> <p>11 <b>overwhelmed with last minute surges in applications, and</b></p> <p>12 <b>potentially a disability exemption could be caught up in</b></p> <p>13 <b>that surge, and so they might not have the actual</b></p> <p>14 <b>physical card with an E on it yet, but the E will be on</b></p> <p>15 <b>the official list of registered voters by the time of the</b></p> <p>16 <b>election, and if a voter applies for the disability</b></p> <p>17 <b>exemption in that 30-day window, then there's not a</b></p> <p>18 <b>guarantee that it'll be on there, but if it's done</b></p> <p>19 <b>before -- 30 days before the election, then they'll have</b></p> <p>20 <b>the E on the official list of registered voters and they</b></p> <p>21 <b>can bring their current election -- their current voter</b></p> <p>22 <b>registration card without the E and show it, because</b></p> <p>23 <b>it'll have the right color, not a previous one, and they</b></p> <p>24 <b>can -- they can get the disability exemption without a --</b></p> <p>25 <b>without a provisional ballot. However, if they ask for</b></p>

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<p style="text-align: right;">153</p> <p>1 the disability exemption within the 30-day window, then</p> <p>2 no, there's not a guarantee.</p> <p>3 Q. So they may still have their registration card</p> <p>4 that doesn't indicate an E and they'll vote by</p> <p>5 provisional ballot?</p> <p>6 A. No, ma'am. If they have their current orange</p> <p>7 colored voter registration certificate and they show up</p> <p>8 to vote and they bring that with them and they say,</p> <p>9 I'm -- I'm disabled, they'll look on the official list of</p> <p>10 registered voters. If there's an E on the official list</p> <p>11 of registered voters for that voter, then they can vote a</p> <p>12 regular ballot.</p> <p>13 Q. And that is pursuant to what?</p> <p>14 A. That's pursuant to our advisory and this FAQ.</p> <p>15 Q. Under what circumstance would a voter who has</p> <p>16 applied for a disability exemption and hasn't received it</p> <p>17 have to vote provisionally?</p> <p>18 A. If they did it less than 30 days before the</p> <p>19 election.</p> <p>20 Q. If a voter obtains a disability exemption and</p> <p>21 moves to another county, that voter needs to reapply for</p> <p>22 the exemption; is that correct?</p> <p>23 A. That's right. They also need to reregister to</p> <p>24 vote in the new county. Voter registration is a</p> <p>25 county-based system, and so the counties don't have any</p>	<p style="text-align: right;">155</p> <p>1 Q. But it's not enough to have the voter indicated</p> <p>2 in TEAM as exempt, in other words --</p> <p>3 A. No. No, that --</p> <p>4 Q. -- because the counties must have separate</p> <p>5 documentation. Is that your testimony?</p> <p>6 A. The counties have to maintain documents with</p> <p>7 regard to their voters, and an E in TEAM that, let's just</p> <p>8 say, Grimes County has because they've seen the</p> <p>9 disability exemption paperwork and they've got it</p> <p>10 maintained for that voter means nothing to Navasota -- I</p> <p>11 mean to Marion County. That -- Marion County just sees</p> <p>12 an E. They don't know that that voter -- they don't know</p> <p>13 what was shown, they don't have it, they don't -- they've</p> <p>14 got a statutory obligation to have the paperwork. The</p> <p>15 county has an --</p> <p>16 Q. Does SB 14 require that?</p> <p>17 A. No. Preexisting law requires that information</p> <p>18 specific to a voter be in the county where the voter is</p> <p>19 registered.</p> <p>20 Q. Do you know how many voters have applied for</p> <p>21 this exemption?</p> <p>22 A. I don't know the current numbers. I know that</p> <p>23 as of January there were 19 in the TEAM system.</p> <p>24 Q. Would you agree that the disability exemption</p> <p>25 is a narrow exemption to the requirements of SB 14 for</p>
<p style="text-align: right;">154</p> <p>1 obligation to share information.</p> <p>2 Q. What is the purpose of that reregistration of</p> <p>3 the disability exemption requirement if one moves?</p> <p>4 A. I don't know how to explain it any better than</p> <p>5 I just did.</p> <p>6 Q. Isn't the voter identified as E within the TEAM</p> <p>7 statewide database?</p> <p>8 A. Probably. Yeah, I think we've got --</p> <p>9 Q. So why is there a reason for the voter to have</p> <p>10 to reapply for that exemption when she moves?</p> <p>11 A. Because they have to reregister to vote and</p> <p>12 they have to apply for an exemption in the new county</p> <p>13 with their new voter registration so that that county</p> <p>14 knows that that voter has got a disabled exemption, and</p> <p>15 they've got an obligation -- the county has an obligation</p> <p>16 under 13, I believe, 054 of the Election Code, maybe</p> <p>17 13.104, to maintain information regarding active voters</p> <p>18 as long as that voter is active and for up to two years</p> <p>19 for a canceled voter.</p> <p>20 So the county has an obligation to have</p> <p>21 the information related to its voters, and if the voter</p> <p>22 registered to vote, got a disability exemption at another</p> <p>23 county, then the county -- the new county wouldn't have</p> <p>24 that data, they would be not complying with their</p> <p>25 statutory obligations.</p>	<p style="text-align: right;">156</p> <p>1 ID?</p> <p>2 A. I don't know how to characterize it.</p> <p>3 Q. Would you characterize 19 as a large number of</p> <p>4 voters?</p> <p>5 MR. KEISTER: Objection, vague.</p> <p>6 A. I don't know in reference to what 19 exists.</p> <p>7 Q. Do you have any -- any view on the part of the</p> <p>8 Secretary of State of whether this is -- provides much</p> <p>9 relief from the ID requirements under SB 14?</p> <p>10 A. I don't believe that the ID requirement needs</p> <p>11 relief. The Secretary of State's Office is in the</p> <p>12 business of implementing the laws as they are put to us</p> <p>13 by the legislature, and in doing so we don't express</p> <p>14 opinions about whether or not the law is ill-founded,</p> <p>15 well-founded. We don't express opinions about whether</p> <p>16 exemptions are narrow or wide. That is not our role.</p> <p>17 Our role is to implement the law.</p> <p>18 Q. Have you assessed whether persons who are</p> <p>19 eligible for the exemption have had any problems or</p> <p>20 success in applying for this exemption?</p> <p>21 A. I have not.</p> <p>22 Q. Do you know of any office that has?</p> <p>23 A. I am not aware of any office that has made such</p> <p>24 an assessment. I do know that our advice to the counties</p> <p>25 is to be -- is to not take a stringent view of the</p>

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<p style="text-align: right;">157</p> <p>1 documentation provided, so if there's any indication on</p> <p>2 the documents anywhere that there's some kind of</p> <p>3 disability from Social Security Administration, we advise</p> <p>4 the county to accept it. We don't -- we don't want them</p> <p>5 in the business of second-guessing Social Security</p> <p>6 Administration documents.</p> <p>7 Q. Was there a time when you determined that</p> <p>8 certain forms of photo ID not expressly listed in SB 14</p> <p>9 were sufficient as ID?</p> <p>10 A. No.</p> <p>11 Q. Did you determine that the -- that a</p> <p>12 citizenship certificate also included a Certificate of</p> <p>13 Naturalization?</p> <p>14 A. We did determine that when the legislature</p> <p>15 listed citizenship certificate as a form of ID they --</p> <p>16 they also meant to include naturalization certificate,</p> <p>17 yeah, that when they said citizenship certificate they</p> <p>18 meant a certificate that you get when you become a</p> <p>19 citizen.</p> <p>20 Q. How did you make that determination? What was</p> <p>21 that based on?</p> <p>22 A. Well, we investigated -- you know, talked to</p> <p>23 the Immigration and Naturalization Service about what is</p> <p>24 a citizenship certificate. This thing exists. Well,</p> <p>25 there is a particular form that the Immigration and</p>	<p style="text-align: right;">159</p> <p>1 any further, to the extent that specific legislatures had</p> <p>2 specific communications related, I don't want you to get</p> <p>3 into the details of those based on legislative privilege,</p> <p>4 but I think you can answer the general question.</p> <p>5 A. The person in our office whose role it is to</p> <p>6 interface with legislatures and their staff is our</p> <p>7 general counsel, Wroe Jackson.</p> <p>8 Q. Certificates of Citizenship are particular</p> <p>9 documents, are they not? Is that your understanding?</p> <p>10 A. That is -- that is what we discovered whenever</p> <p>11 we were putting this process together, yes, ma'am.</p> <p>12 Q. And that was what is specifically mentioned in</p> <p>13 the text of SB 14, is it not?</p> <p>14 A. It says -- it says certificate of citizenship,</p> <p>15 but it didn't mean citizenship certificate the way that</p> <p>16 INS means it.</p> <p>17 Q. So your interpretation is that it includes</p> <p>18 Certificate of Naturalization?</p> <p>19 A. That's right.</p> <p>20 Q. Could the Secretary of State's Office reverse</p> <p>21 its decision on this position at any time?</p> <p>22 A. Could they?</p> <p>23 Q. Yes.</p> <p>24 A. I don't know.</p> <p>25 Q. Could you legally reverse your decision and</p>
<p style="text-align: right;">158</p> <p>1 Naturalization Service comes up with that is a</p> <p>2 citizenship certificate by name, and we talked to the</p> <p>3 drafters of the legislation and asked them if that's what</p> <p>4 they meant when they said citizenship certificate, did</p> <p>5 they mean a particular document or did they mean the</p> <p>6 document that you get -- a person gets whenever they</p> <p>7 become a citizen, and they said the latter. We said,</p> <p>8 okay, well, there -- there's two things, then. We've got</p> <p>9 a naturalization certificate and a Certificate of</p> <p>10 Citizenship. Certificate of citizenship was meant</p> <p>11 generically in SB 14, and it actually has a specific</p> <p>12 thing. So we haven't expanded what the legislature</p> <p>13 intended, we've only implemented what the legislature</p> <p>14 intended.</p> <p>15 Q. Did you have discussions with Senator Fraser</p> <p>16 about this issue?</p> <p>17 A. No.</p> <p>18 Q. Others in the legislature?</p> <p>19 A. Did I?</p> <p>20 Q. Yes.</p> <p>21 A. No, ma'am.</p> <p>22 Q. Did anyone in your office?</p> <p>23 A. Yes, ma'am.</p> <p>24 Q. Who in your office?</p> <p>25 MR. KEISTER: Let me just -- before we go</p>	<p style="text-align: right;">160</p> <p>1 decide that that was not an acceptable form of ID?</p> <p>2 A. I don't know.</p> <p>3 Q. You haven't issued a regulation to this effect,</p> <p>4 have you?</p> <p>5 A. No.</p> <p>6 Q. How has this been communicated to county</p> <p>7 election officials, that this form of ID is acceptable?</p> <p>8 A. We have, obviously, training materials for pol</p> <p>9 workers as well as county election officials, and it's</p> <p>10 included in that training.</p> <p>11 Q. Beyond training is there any legal embodiment,</p> <p>12 any regulation or any steps that you've taken to make</p> <p>13 this permanent in a legal sense?</p> <p>14 A. No, ma'am. The statutes made it permanent.</p> <p>15 Q. Because, as you testified earlier, you believe</p> <p>16 the legislature intended to list that form of ID even</p> <p>17 though it's not expressly included; is that correct?</p> <p>18 A. No, ma'am. That is not what I said. I said it</p> <p>19 was listed. It is listed.</p> <p>20 Q. You believe a Certificate of Naturalization is</p> <p>21 a Certificate of Citizenship? That's your testimony</p> <p>22 today?</p> <p>23 A. That is my -- that is my testimony, as the</p> <p>24 legislature intended it, you bet.</p> <p>25 Q. Do you believe that the Secretary of State's</p>

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<p style="text-align: right;">165</p> <p>1 Q. Every single person in the elections division?</p> <p>2 <b>A. I believe so, yes, ma'am.</b></p> <p>3 Q. And you individually did that search or did</p> <p>4 your counsel?</p> <p>5 <b>A. I did it.</b></p> <p>6 Q. Was that true for all employees? Did the</p> <p>7 Office of the Attorney General conduct any searches or</p> <p>8 did -- did all the individual e-mail users do their own</p> <p>9 searches?</p> <p>10 MR. KEISTER: Don't comment on what the</p> <p>11 Office of the Attorney General did. That's worker --</p> <p>12 that's worker -- attorney -- attorney-client and work</p> <p>13 product. But you can tell her what y'all did.</p> <p>14 <b>A. We were responsible for producing our</b></p> <p>15 <b>documents. Now, that involved individual searches as</b></p> <p>16 <b>well as global searches by our IT department.</b></p> <p>17 Q. When did you most recently search your own</p> <p>18 e-mail in response to the request for production?</p> <p>19 <b>A. When it was answered.</b></p> <p>20 Q. So that would be in January or February of this</p> <p>21 year?</p> <p>22 <b>A. Yes, ma'am.</b></p> <p>23 Q. Have you conducted any subsequent searches</p> <p>24 since that time?</p> <p>25 <b>A. No, ma'am.</b></p>	<p style="text-align: right;">167</p> <p>1 request that the responses to the RFP be updated and</p> <p>2 supplemented as required by the federal rules.</p> <p>3 Q. Now we're going to turn to another topic,</p> <p>4 information provided to the legislature. I'm going to --</p> <p>5 MR. KEISTER: Elizabeth, would this be a</p> <p>6 good time for a break?</p> <p>7 MS. WESTFALL: I think it would. What is</p> <p>8 the time?</p> <p>9 MS. MARANZANO: 12:30.</p> <p>10 MS. WESTFALL: If I can push through I can</p> <p>11 get through my topics. I have a few more pages. Can you</p> <p>12 bear with me?</p> <p>13 MR. KEISTER: I'll try.</p> <p>14 MS. WESTFALL: Okay.</p> <p>15 MS. MARANZANO: Can we take a quick break?</p> <p>16 MS. WESTFALL: Yeah, let's take a quick</p> <p>17 break. We can go off the record.</p> <p>18 MR. KEISTER: Yeah.</p> <p>19 (Recess from 12:33 p.m. to 12:47 p.m.)</p> <p>20 BY MS. WESTFALL:</p> <p>21 Q. Mr. Ingram, I want to turn to a different</p> <p>22 topic, which is item number 5 on the notice related to</p> <p>23 all information that was provided to the Texas</p> <p>24 Legislature regarding certain bills.</p> <p>25 <b>A. Right.</b></p>
<p style="text-align: right;">166</p> <p>1 Q. Do you use personal e-mail to communicate with</p> <p>2 the Secretary of State employees, your personal e-mail</p> <p>3 and not the Secretary of State's e-mail to conduct</p> <p>4 official business?</p> <p>5 <b>A. No, ma'am.</b></p> <p>6 Q. Do you know whether anyone else in your office</p> <p>7 or your IT department has conducted search -- searches of</p> <p>8 e-mail or of the server in response to the RFP subsequent</p> <p>9 to January or February of this year?</p> <p>10 <b>A. I don't know what they've done. I don't</b></p> <p>11 <b>believe so.</b></p> <p>12 Q. Have you provided any additional documents</p> <p>13 since the response was -- was made in February or January</p> <p>14 of this year?</p> <p>15 <b>A. No, ma'am, just what we brought today, the</b></p> <p>16 <b>communication stuff.</b></p> <p>17 Q. Are you continuing to try to locate responsive</p> <p>18 documents in response to the request today or at any time</p> <p>19 since the responses?</p> <p>20 <b>A. No. If we were asked to we would. You know,</b></p> <p>21 <b>there have been some documents generated since the</b></p> <p>22 <b>requests for production have been responded to that would</b></p> <p>23 <b>probably be responsive, and so we could certainly.</b></p> <p>24 Q. Thank you.</p> <p>25 MS. WESTFALL: And, Mr. Keister, we would</p>	<p style="text-align: right;">168</p> <p>1 <b>Q. During the 79th Legislative Session in 2005 did</b></p> <p>2 <b>the Secretary of State's Office provide the Texas</b></p> <p>3 <b>Legislature with any information or data related to voter</b></p> <p>4 <b>ID?</b></p> <p>5 <b>A. I don't know, and the thing is, nobody in our</b></p> <p>6 <b>office knows.</b></p> <p>7 <b>Q. Okay. And during the 80th Legislative Session</b></p> <p>8 <b>in 2007 did the Secretary of State's Office provide the</b></p> <p>9 <b>legislature with any information or data related to voter</b></p> <p>10 <b>ID?</b></p> <p>11 <b>A. Again, I don't know and nobody in our office</b></p> <p>12 <b>knows. Whatever the documents reflect was provided is</b></p> <p>13 <b>what we know about.</b></p> <p>14 <b>Q. And the same question with regard to the 81st</b></p> <p>15 <b>Legislative Session in 2009; do you know whether the</b></p> <p>16 <b>Secretary of State's Office provided the legislature with</b></p> <p>17 <b>any information or data related to voter ID?</b></p> <p>18 <b>A. I don't know and nobody in our office knows.</b></p> <p>19 <b>Whatever the legislative documents and hearing testimony</b></p> <p>20 <b>reveals is what it reveals.</b></p> <p>21 Q. Turning to -- do you know whether Ann McGeehan</p> <p>22 would know the answer to those questions?</p> <p>23 <b>A. She would have a better idea than -- than</b></p> <p>24 <b>anybody currently at our office.</b></p> <p>25 Q. Would she be the best person to answer those</p>

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<p style="text-align: right;">169</p> <p>1 questions, do you think?</p> <p>2 <b>A. I don't know. I would expect that either she</b></p> <p>3 <b>or Elizabeth Winn would be the ones to talk to, but I</b></p> <p>4 <b>don't know.</b></p> <p>5 Q. Between January 1, 2005 and May 27, 2011 did</p> <p>6 the Secretary of State's Office conduct any analyses of</p> <p>7 registered voters who possess a Texas driver license or</p> <p>8 personal ID?</p> <p>9 <b>A. I don't know. I've seen documents that reflect</b></p> <p>10 <b>that -- that there was some matching going on in the 2011</b></p> <p>11 <b>Legislative Session. I don't know if there was any</b></p> <p>12 <b>before that.</b></p> <p>13 Q. Okay. And what was that matching in 2011?</p> <p>14 <b>A. It was similar to the matching that occurred in</b></p> <p>15 <b>September of 2011, January of 2012, and August -- or July</b></p> <p>16 <b>of 2013.</b></p> <p>17 Q. Was that the only matching that you're aware of</p> <p>18 during that time period other than the other ones you</p> <p>19 just testified to?</p> <p>20 <b>A. That's right.</b></p> <p>21 Q. In 2011 did the Secretary of State's Office</p> <p>22 receive a request for a comparison of registered voters</p> <p>23 with a driver license database from the legislature?</p> <p>24 <b>A. I don't know. I think that such a request was</b></p> <p>25 <b>made, yes, ma'am.</b></p>	<p style="text-align: right;">171</p> <p>1 transcript, which is TX 00000846, there is a colloquy</p> <p>2 between Senator Williams and Ann McGeehan concerning a</p> <p>3 data request?</p> <p>4 <b>A. I see that Senator Williams talks about that,</b></p> <p>5 <b>yes.</b></p> <p>6 Q. And he was requesting a comparison of voters</p> <p>7 with the driver license database; is that correct?</p> <p>8 <b>A. Looks like that's what he was doing, yes,</b></p> <p>9 <b>ma'am.</b></p> <p>10 Q. Is it your understanding that such an analysis</p> <p>11 was undertaken by the Secretary of State's Office?</p> <p>12 <b>A. I have seen the evidence that there was some</b></p> <p>13 <b>matching going on, yes, ma'am.</b></p> <p>14 Q. What was the evidence that you refer to?</p> <p>15 <b>A. I've seen some e-mail traffic.</b></p> <p>16 Q. What did that e-mail traffic indicate?</p> <p>17 <b>A. That there was some matching going on.</b></p> <p>18 Q. What was the results of the matching?</p> <p>19 <b>A. I don't remember. It seems like there were --</b></p> <p>20 <b>that they had done the analysis several different ways</b></p> <p>21 <b>and come up -- came up with several different results</b></p> <p>22 <b>that were all pretty close to the same thing.</b></p> <p>23 Q. What were the results, if you recall?</p> <p>24 <b>A. I don't really remember. To the best of my</b></p> <p>25 <b>recollection, it was somewhere in the 650,000 range,</b></p>
<p style="text-align: right;">170</p> <p>1 Q. And was it made by Senator Williams?</p> <p>2 <b>A. I don't know.</b></p> <p>3 Q. Did the division or the Secretary of State's</p> <p>4 Office subsequently conduct an analysis of registered</p> <p>5 voters compared with the driver license database?</p> <p>6 <b>A. I have seen some e-mail traffic -- whenever I</b></p> <p>7 <b>first started with the Secretary of State we were pulling</b></p> <p>8 <b>together documents related to photo ID for a public</b></p> <p>9 <b>information request, and there were some documents in</b></p> <p>10 <b>that pile that indicated that there was some matching</b></p> <p>11 <b>going on in the spring of 2011.</b></p> <p>12 MS. WESTFALL: Could you mark this.</p> <p>13 (Exhibit No. 22 marked)</p> <p>14 Q. You've been handed what's been marked as</p> <p>15 Exhibit 22. Do you recognize this?</p> <p>16 <b>A. No, ma'am.</b></p> <p>17 Q. Did you -- have you ever reviewed -- well, you</p> <p>18 can see on the -- on the cover page that it's a</p> <p>19 transcript of proceedings before the legislature in the</p> <p>20 82nd Legislature on January 25, 2011; is that right?</p> <p>21 <b>A. I do see that, yes.</b></p> <p>22 Q. So you have not reviewed this testimony in</p> <p>23 advance of this deposition today?</p> <p>24 <b>A. No, ma'am, I have not.</b></p> <p>25 Q. Are you aware that on page 490 of this</p>	<p style="text-align: right;">172</p> <p>1 <b>600,000 range, five-eighty-six. So it was in the -- it</b></p> <p>2 <b>was in the ballpark of what was later done in September</b></p> <p>3 <b>of 2011 is what I remember, that it was not very</b></p> <p>4 <b>different from what was later done for preclearance.</b></p> <p>5 Q. Do you know who in the division of the</p> <p>6 Secretary of State's Office was involved in this matching</p> <p>7 process?</p> <p>8 <b>A. I don't know who it would have been in 2011.</b></p> <p>9 Q. And do you know whether it was released outside</p> <p>10 of the Secretary of State's Office?</p> <p>11 <b>A. I do not.</b></p> <p>12 Q. Do you know who would know the answer to that</p> <p>13 question?</p> <p>14 <b>A. I don't know if anybody would. Certainly not</b></p> <p>15 <b>anybody in our office.</b></p> <p>16 Q. Do you know if Ann McGeehan would know the</p> <p>17 answer to that question?</p> <p>18 <b>A. She might. I don't know.</b></p> <p>19 Q. Do you know if Elizabeth Winn would know the</p> <p>20 answer to that question?</p> <p>21 <b>A. She might. I don't know.</b></p> <p>22 MS. WESTFALL: Can you mark this, please.</p> <p>23 (Exhibit No. 23 marked)</p> <p>24 Q. I'm handing you what's been marked as</p> <p>25 Exhibit 23. Can you take a look at this exhibit and let</p>



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<p style="text-align: right;">173</p> <p>1 me know if you've seen it before?</p> <p>2 <b>A. I believe this is the e-mail that was attached</b></p> <p>3 <b>to either the request for admission or request for</b></p> <p>4 <b>production.</b></p> <p>5 Q. And have you reviewed this in advance of this</p> <p>6 deposition?</p> <p>7 <b>A. No. I saw it whenever it came with the</b></p> <p>8 <b>discovery request.</b></p> <p>9 Q. Do you see that the e-mail was drafted</p> <p>10 around -- it's a bunch of e-mails from January 27, 2011,</p> <p>11 to February 1, 2011?</p> <p>12 <b>A. I see that.</b></p> <p>13 Q. And it has an analysis of voters -- or an</p> <p>14 estimate and reporting of the number of registered voters</p> <p>15 without a driver license or personal ID card?</p> <p>16 <b>A. No, I do not agree that that's what it shows.</b></p> <p>17 Q. What does it show, in your view?</p> <p>18 <b>A. It shows non-matches.</b></p> <p>19 Q. And do you see there's a summary about the</p> <p>20 question presented, a discussion, and a conclusion on</p> <p>21 page TX 00107735?</p> <p>22 <b>A. I see that.</b></p> <p>23 Q. And do you see the conclusion is between</p> <p>24 844,000 plus voters to 678,000 plus voters may not have</p> <p>25 been issued a driver license or ID by DPS?</p>	<p style="text-align: right;">175</p> <p>1 <b>Do you know where -- is Karen Richards</b></p> <p>2 <b>employed with the Secretary of State today?</b></p> <p>3 <b>A. She is not.</b></p> <p>4 Q. Where is she employed?</p> <p>5 <b>A. She is, I believe -- last I heard she was</b></p> <p>6 <b>employed with VOTEC.</b></p> <p>7 Q. And where is that company based?</p> <p>8 <b>A. VOTEC, I believe, has their headquarters in</b></p> <p>9 <b>California. She works here in Austin.</b></p> <p>10 Q. When did she leave the Secretary of State's</p> <p>11 Office?</p> <p>12 <b>A. I'm not sure on her exact leave date, but I</b></p> <p>13 <b>believe it was July of 2011.</b></p> <p>14 Q. What were the circumstances of her -- the</p> <p>15 ending of her employment with the Secretary of State's</p> <p>16 Office?</p> <p>17 <b>A. I don't know. It was before my time. From</b></p> <p>18 <b>everything I can see, she got a better offer.</b></p> <p>19 Q. Do you know whether the Texas Legislature ever</p> <p>20 saw this analysis during -- when it was considering</p> <p>21 SB 14?</p> <p>22 <b>A. I don't know for sure, but I've seen nothing to</b></p> <p>23 <b>indicate that they did.</b></p> <p>24 Q. Do you know why, in response to</p> <p>25 Senator Williams' request, this wasn't provided to the</p>
<p style="text-align: right;">174</p> <p>1 <b>A. I see that.</b></p> <p>2 Q. And was this -- to your knowledge was this</p> <p>3 question, discussion, and conclusion drafted by Ann</p> <p>4 McGeehan?</p> <p>5 <b>A. No.</b></p> <p>6 Q. Who was it drafted by?</p> <p>7 <b>A. Karen Richards.</b></p> <p>8 Q. And who is Karen Richards?</p> <p>9 <b>A. She was the voter registration manager back</b></p> <p>10 <b>then.</b></p> <p>11 Q. Do you know whether SB 14 was being considered</p> <p>12 by the Senate or the House of the Texas Legislature at</p> <p>13 the time these e-mails were written?</p> <p>14 <b>A. I do not.</b></p> <p>15 Q. Do you know whether this analysis was conducted</p> <p>16 in response to Senator Williams' inquiry?</p> <p>17 <b>A. I don't.</b></p> <p>18 Q. Do you know whether this analysis was released</p> <p>19 outside of the Secretary of State's Office?</p> <p>20 <b>A. I do not. I've seen nothing to indicate that</b></p> <p>21 <b>it ever was.</b></p> <p>22 Q. Do you know whether anyone within the Secretary</p> <p>23 of State's Office directed that it not be released --</p> <p>24 <b>A. I don't know.</b></p> <p>25 Q. -- outside the Secretary of State's Office?</p>	<p style="text-align: right;">176</p> <p>1 legislature?</p> <p>2 <b>A. I don't. It is my belief that it's because the</b></p> <p>3 <b>data is uncertain and we didn't want to give a wrong</b></p> <p>4 <b>impression.</b></p> <p>5 Q. And what is that belief based on?</p> <p>6 <b>A. The fact that in subsequent matching exercises</b></p> <p>7 <b>we have a pretty high degree of uncertainty.</b></p> <p>8 Q. So Senator Williams' request was not -- there</p> <p>9 was no response to him?</p> <p>10 <b>A. I don't know what response was given to him.</b></p> <p>11 Q. In 2011 did the division receive any other</p> <p>12 requests for information about voters without a driver</p> <p>13 license or a personal ID card?</p> <p>14 <b>A. I don't know.</b></p> <p>15 Q. And besides the analysis on an e-mail on</p> <p>16 Exhibit 23, are you aware of any other analyses that the</p> <p>17 division conducted that relate to SB 14 during 2011</p> <p>18 before the bill was signed into law in May?</p> <p>19 <b>A. I don't -- I don't believe that any other</b></p> <p>20 <b>analyses were performed. I think that these queries that</b></p> <p>21 <b>are outlined on page TX 00107734 are the queries that</b></p> <p>22 <b>were done.</b></p> <p>23 Q. Do you know why this analysis was not part of</p> <p>24 the defendants' interrogatory responses in response to</p> <p>25 requests about analyses that have been done of voters</p>

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<p style="text-align: right;">177</p> <p>1 without a driver license?</p> <p>2 <b>A. I don't know. That's -- I don't know.</b></p> <p>3 Q. Was any other analysis done by the Secretary of</p> <p>4 State's Office in 2011 regarding registered or eligible</p> <p>5 voters without any other forms of ID required by SB 14?</p> <p>6 <b>A. Not that I'm aware of. I don't believe so.</b></p> <p>7 Q. Can you state every single occasion on which</p> <p>8 the Secretary of State has attempted to match the TEAM</p> <p>9 database to the DPS driver license database?</p> <p>10 <b>A. Well, I don't know if I can give you every</b></p> <p>11 <b>time. I know the ones that I know about.</b></p> <p>12 Q. Okay.</p> <p>13 <b>A. And based on what I know, the DPS database</b></p> <p>14 <b>hasn't been a constant variable in these matching</b></p> <p>15 <b>exercises.</b></p> <p>16 Q. Okay. Could you describe every occasion that</p> <p>17 you're aware of?</p> <p>18 <b>A. So we've got this that happened early in 2011.</b></p> <p>19 <b>I have no idea which version of the DPS database they</b></p> <p>20 <b>used for this, and so I don't know. That's one. Then we</b></p> <p>21 <b>know about September of 2011, and what I don't know is if</b></p> <p>22 <b>previous results were given in response to requests from</b></p> <p>23 <b>the Department of Justice or if a new analysis was done.</b></p> <p>24 <b>I believe that one of these queries was produced, but I</b></p> <p>25 <b>don't know that for sure, and it looks like the numbers</b></p>	<p style="text-align: right;">179</p> <p>1 correct?</p> <p>2 <b>A. Right.</b></p> <p>3 Q. And then are you aware that in this litigation</p> <p>4 the TEAM database has been supplied to the Department of</p> <p>5 Justice along with the DPS database to conduct matching?</p> <p>6 <b>A. Sure.</b></p> <p>7 Q. Are there any other entities or parties that</p> <p>8 your office has provided the TEAM database to, to conduct</p> <p>9 matching with the driver license database?</p> <p>10 <b>MR. KEISTER: As long as it has nothing to</b></p> <p>11 <b>do with the attorney-client privilege. Don't mention</b></p> <p>12 <b>anything about the OAG.</b></p> <p>13 <b>A. We get public information requests for the TEAM</b></p> <p>14 <b>database on a regular basis, and I don't know what people</b></p> <p>15 <b>are doing with it, so I can't really answer the question.</b></p> <p>16 <b>It could be that some people who are getting the TEAM</b></p> <p>17 <b>database are trying to do some kind of matching. I don't</b></p> <p>18 <b>know. I do know that the counties were interested in</b></p> <p>19 <b>doing matching on their own, and so they obtained a</b></p> <p>20 <b>driver license database from DPS that we facilitated that</b></p> <p>21 <b>transaction so that they could match their voter</b></p> <p>22 <b>registration data against the DPS, but they already have</b></p> <p>23 <b>the TEAM database, so I don't know if that's what you're</b></p> <p>24 <b>talking about or not.</b></p> <p>25 Q. I guess putting aside copies of the TEAM</p>
<p style="text-align: right;">178</p> <p>1 match maybe Query 3, but I don't know. So I don't know</p> <p>2 if there was a separate matching exercise done or if they</p> <p>3 relied on results they'd received earlier in the year.</p> <p>4 For the January 2012 matching exercise we got a new</p> <p>5 version of the DPS database that was specifically for</p> <p>6 that exercise, and it was a version that contained race</p> <p>7 and ethnicity data as the DPS had it, and so we did that</p> <p>8 exercise. That exercise happened in December of 2011</p> <p>9 before I began with the office in January of '12. And</p> <p>10 then the next time we did it was with the DPS database</p> <p>11 that was provided for the jury wheel constitution, and</p> <p>12 that was done in 2013. So those are the ones that I know</p> <p>13 about.</p> <p>14 Q. Those are the sum total that you're aware of?</p> <p>15 <b>A. That I'm aware of, yes, ma'am. And I don't</b></p> <p>16 <b>know if September of '11 was a separate matching exercise</b></p> <p>17 <b>or a giving of the data from before.</b></p> <p>18 Q. Has the Secretary of State ever provided the</p> <p>19 TEAM database to anyone other than the Department of</p> <p>20 Justice for purposes of matching to the DPS driver</p> <p>21 license office?</p> <p>22 <b>A. I don't -- I can't understand that question.</b></p> <p>23 Q. Okay. Any other -- you described some matching</p> <p>24 that the Secretary of State's Office has done itself with</p> <p>25 TEAM and DPS, correct -- the driver license database,</p>	<p style="text-align: right;">180</p> <p>1 database or communications that you've had with your</p> <p>2 counsel, because I don't want you to testify about that,</p> <p>3 have you supplied the TEAM database to anybody else with</p> <p>4 the intention of the -- for the purpose of matching</p> <p>5 against the driver license database?</p> <p>6 <b>A. I -- I don't -- I don't know how to answer that</b></p> <p>7 <b>question. I know that the Department of Justice is not</b></p> <p>8 <b>the only plaintiff in this litigation or in the previous</b></p> <p>9 <b>litigation, and I believe the other plaintiffs also</b></p> <p>10 <b>received a copy of the database. I don't know if they</b></p> <p>11 <b>actually were planning to do matching with that or not.</b></p> <p>12 <b>I just -- I don't know what the purpose of someone's</b></p> <p>13 <b>request is.</b></p> <p>14 Q. So you have not received any other matching</p> <p>15 results outside of any communications you've had with</p> <p>16 OAG's office concerning TEAM and the DPS driver license</p> <p>17 database?</p> <p>18 <b>A. No. Some counties have done some matching, and</b></p> <p>19 <b>so they've -- they've communicated some of those results</b></p> <p>20 <b>to us.</b></p> <p>21 Q. Which counties?</p> <p>22 <b>A. Parker County comes to mind.</b></p> <p>23 Q. So Parker County has matched its county</p> <p>24 database against the DPS driver license database; is that</p> <p>25 right?</p>

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<p style="text-align: right;">181</p> <p>1 A. That's right.</p> <p>2 Q. And there was a result and they provided it to</p> <p>3 you; is that correct?</p> <p>4 A. They did.</p> <p>5 Q. And when did that occur?</p> <p>6 A. I don't know for sure. I believe it was after</p> <p>7 our county election official seminar last year in July of</p> <p>8 2013, so maybe August or September of 2013.</p> <p>9 Q. Have any other counties engaged in similar</p> <p>10 matching?</p> <p>11 A. I know that Dallas County has done it. I've</p> <p>12 seen news media reports indicating that they've got</p> <p>13 results that they've acted upon. And then I know that</p> <p>14 Harris County has done it. They haven't reported to us</p> <p>15 the results, but I know that they've got copies of both</p> <p>16 of those databases, done some matching, and reached out</p> <p>17 to voters. And I know that Travis --</p> <p>18 Q. But Dallas -- Dallas and Harris -- I'm sorry --</p> <p>19 and Travis have not supplied you with the fruits of that</p> <p>20 matching?</p> <p>21 A. That's right. And I don't know if any other</p> <p>22 counties have done it. I just don't know.</p> <p>23 Q. Do you know what fields they compared in</p> <p>24 conducting those matches or do you have any information</p> <p>25 about how those matches were conducted?</p>	<p style="text-align: right;">183</p> <p>1 off-line counties it means that there is a task for the</p> <p>2 off-line county to perform with regard to that voter, and</p> <p>3 the task is a 99 to cancel.</p> <p>4 Q. How many counties are still not on-line with</p> <p>5 TEAM?</p> <p>6 A. I think the current number is 215 on-line and</p> <p>7 39 off-line.</p> <p>8 Q. When you get a weak match, as referred to in</p> <p>9 the -- in the interrogatory responses --</p> <p>10 A. Sure.</p> <p>11 Q. -- what happens to them?</p> <p>12 A. Weak matches are investigated by the counties.</p> <p>13 There was a little tweak -- I believe it was</p> <p>14 House Bill 3593 -- that required the counties to do some</p> <p>15 actual investigative work before they send a letter. It</p> <p>16 used to be that counties could claim as their</p> <p>17 investigation sending a confirmation notice to the</p> <p>18 potentially deceased voter, but now the law requires them</p> <p>19 to do an actual investigation before they send a letter.</p> <p>20 If they can't determine if the voter is deceased or if</p> <p>21 they can't determine if the voter is alive, then they</p> <p>22 will send a letter to the voter that says, we've done</p> <p>23 some matching and it looks like you could be deceased, we</p> <p>24 hope you're not.</p> <p>25 Q. And that's done at the county level?</p>
<p style="text-align: right;">182</p> <p>1 A. I do not.</p> <p>2 Q. I would like to turn to matching between the</p> <p>3 Bureau of Vital Statistics and the TEAM database.</p> <p>4 A. Okay.</p> <p>5 Q. Your interrogatory responses indicate that the</p> <p>6 vital statistics sends over a list of deceased persons to</p> <p>7 the Secretary of State's Office weekly; is that right?</p> <p>8 A. That is correct.</p> <p>9 Q. And what happens with that information?</p> <p>10 A. It is -- it automatically goes through a</p> <p>11 process where matches are made and sent out to the</p> <p>12 counties.</p> <p>13 Q. This is an automatic process that -- that</p> <p>14 matches the deceased individuals identified by vital</p> <p>15 statistics with TEAM and then it just sends it out; is</p> <p>16 that correct?</p> <p>17 A. That's right.</p> <p>18 Q. And this is conducted centrally in your office?</p> <p>19 A. It is since 2007.</p> <p>20 Q. Then the individual counties get those results</p> <p>21 and determine what to do in terms of list maintenance for</p> <p>22 their own county list; is that correct?</p> <p>23 A. Not exactly. For the strong-matched deceased,</p> <p>24 they are automatically canceled in TEAM. For on-line</p> <p>25 counties that means that the voter is canceled. For</p>	<p style="text-align: right;">184</p> <p>1 A. That's all at the county level.</p> <p>2 Q. Does the voter still stay in active status</p> <p>3 during all the investigation until the letter goes out?</p> <p>4 It's not put in any sort of suspense or inactive status?</p> <p>5 A. Their status doesn't change unless 30 days goes</p> <p>6 by without a response to the letter.</p> <p>7 Q. And then if there is no response, they're</p> <p>8 presumed to be deceased then?</p> <p>9 A. They're canceled. 16.037 of the Election Code</p> <p>10 requires immediate reinstatement if someone is wrongfully</p> <p>11 canceled, so if they show up and they're not actually</p> <p>12 deceased, then they're immediately reinstated and vote a</p> <p>13 regular ballot.</p> <p>14 Q. They will not appear on the list of registered</p> <p>15 voters, correct?</p> <p>16 A. That's correct.</p> <p>17 Q. But if they appear with a proper ID and a voter</p> <p>18 registration card, what happens then?</p> <p>19 A. If they appear with a proper ID -- they don't</p> <p>20 need the voter registration card unless they're disabled,</p> <p>21 but if they appear with a proper ID and they say, this is</p> <p>22 my precinct, then often the poll workers will call the</p> <p>23 voter registrar and the voter registrar will look them up</p> <p>24 and will determine if they were canceled for being</p> <p>25 deceased, and they'll say, but I'm not dead yet, and they</p>

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<p style="text-align: right;">185</p> <p>1 will be reinstated.</p> <p>2 Q. Turning to your interrogatory responses again,</p> <p>3 at page 66 -- I believe it's Exhibit 2. Is a weak match</p> <p>4 found where there is a match on first name, last name,</p> <p>5 date of birth alone without also looking at Social</p> <p>6 Security number when comparing TEAM with the</p> <p>7 Social Security Administration Death Master File?</p> <p>8 A. Yeah, that -- that's a different process. So</p> <p>9 the Bureau of Vital Statistics, first name, last name,</p> <p>10 date of birth is not one of the matching criteria.</p> <p>11 Q. Right. But did I accurately describe what</p> <p>12 happens with regard to the Social Security Administration</p> <p>13 Death Master File?</p> <p>14 A. Yes.</p> <p>15 Q. And the Social Security -- the -- pardon me,</p> <p>16 The Secretary of State started using the Social Security</p> <p>17 Administration Death Master File in June 2012; is that</p> <p>18 right?</p> <p>19 A. That is correct.</p> <p>20 Q. Was there a reason why the Secretary of State's</p> <p>21 Office did not use it prior to that time?</p> <p>22 A. It was not required to by the legislature. The</p> <p>23 legislature passed a bill that ended up being 18.068 of</p> <p>24 the Election Code that required it.</p> <p>25 Q. That was in 2012?</p>	<p style="text-align: right;">187</p> <p>1 name on the list of registered voters, and so there was</p> <p>2 no real need to be tight with regard to name fields</p> <p>3 inside of TEAM. But with the advent of the substantially</p> <p>4 similar name requirement versus exact name match some</p> <p>5 voters might be interested to know how their name is</p> <p>6 going to appear on the official list of registered</p> <p>7 voters, and so to have the name appear on the voter</p> <p>8 registration certificate the way it will appear on the --</p> <p>9 on what we call the OLRV, then to have it appear on the</p> <p>10 look-up for Am I Registered the way it'll appear on the</p> <p>11 OLRV, and then to appear on the OLRV in a uniform way, we</p> <p>12 tightened up the name rules inside of TEAM.</p> <p>13 Q. What do you mean? Can you just describe --</p> <p>14 I -- I understand the similar -- similar name rule, but</p> <p>15 what is the tightening that you're --</p> <p>16 A. Well, before --</p> <p>17 Q. -- referring to?</p> <p>18 A. Before we messed with the name fields inside of</p> <p>19 TEAM it's possible that a voter could have a voter</p> <p>20 registration card with one name on it, they could look</p> <p>21 themselves up on Am I Registered and see a different</p> <p>22 version of their name, and then they could show up on the</p> <p>23 official list of registered voters and it would be yet</p> <p>24 another version of their name. They were all the same</p> <p>25 names that they had given to us when they registered to</p>
<p style="text-align: right;">186</p> <p>1 A. Yes. Well, they passed the bill in 2011.</p> <p>2 Q. Was there anything that prevented the Secretary</p> <p>3 of State's Office from using the Death Master File prior</p> <p>4 to that time?</p> <p>5 A. It -- it costs money to have the Death Master</p> <p>6 File and we didn't have any budget for it, so I don't</p> <p>7 know if that was the reason. I didn't -- I wasn't here</p> <p>8 before 2012, so I don't know what the office's thought</p> <p>9 was with regard to the Social Security Administration's</p> <p>10 Death Master File before 2012.</p> <p>11 Q. Are you aware of any legal prohibition on using</p> <p>12 the Death Master File prior to that time?</p> <p>13 A. Prohibition? I don't know of any prohibition.</p> <p>14 Q. It just wasn't required; is that your</p> <p>15 testimony?</p> <p>16 A. Right. And -- and -- yeah, that's right.</p> <p>17 Q. Turning to Topic 17, what changes have been</p> <p>18 made to the TEAM database to implement and enforce</p> <p>19 SB 14's requirements?</p> <p>20 A. The TEAM database has been -- has been updated</p> <p>21 to accommodate the E for the disability exemption so that</p> <p>22 that can be coded for a voter. The other thing that</p> <p>23 changed was we tightened up the name fields. So prior to</p> <p>24 SB 14 there was no category for exact name match versus</p> <p>25 substantially similar name, it was just find the voter's</p>	<p style="text-align: right;">188</p> <p>1 vote, but they weren't first, middle, last, former,</p> <p>2 nickname, suffix, you know, all of the things that are --</p> <p>3 that are -- so what we did inside of TEAM is make that</p> <p>4 tight so that first, middle, and last would show up over</p> <p>5 the mailing address on the voter registration</p> <p>6 certificate, first, middle, and last would show up if</p> <p>7 someone looks themselves up on Am I Registered, and</p> <p>8 first, middle, and last would show up on the official</p> <p>9 list of registered voters. So what we did is we made the</p> <p>10 names consistent so that a voter could look themselves up</p> <p>11 and have notice beforehand if there's not an exact match</p> <p>12 to whatever form of ID they want to use.</p> <p>13 Q. Did you make any changes to the provisional</p> <p>14 ballot fields?</p> <p>15 A. No.</p> <p>16 Q. So if a provisional ballot is rejected does</p> <p>17 TEAM indicate the reason for rejection?</p> <p>18 A. No.</p> <p>19 Q. And is it still the case that TEAM only</p> <p>20 reflects successful applicants for disability exemptions?</p> <p>21 A. I believe that's correct, yes, ma'am.</p> <p>22 Q. So if you apply and you're rejected, it's not</p> <p>23 so indicated?</p> <p>24 A. Right. The counties would have that</p> <p>25 information.</p>

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48 (Pages 189 to 192)

<p style="text-align: right;">189</p> <p>1 Q. Is the Secretary of State's Office doing</p> <p>2 anything to monitor whether counties are properly</p> <p>3 administering the disability exemption?</p> <p>4 A. What do you mean?</p> <p>5 Q. To see whether they're correctly processing</p> <p>6 applications?</p> <p>7 A. Again, what do you mean?</p> <p>8 Q. To determine whether the counties are using the</p> <p>9 proper criteria?</p> <p>10 A. No, I understand that question. What I don't</p> <p>11 understand is what you would suggest we would do to</p> <p>12 monitor their success or failure.</p> <p>13 Q. Well, are you aware -- are you aware of whether</p> <p>14 they are successfully implementing it or not? Is there</p> <p>15 any oversight whatsoever you can identify today in your</p> <p>16 deposition?</p> <p>17 A. I don't know what form this oversight would</p> <p>18 take.</p> <p>19 Q. So is the answer no?</p> <p>20 A. Well, I mean, we respond to questions that the</p> <p>21 counties ask. If they have a question about the process,</p> <p>22 if they have a question about a document they received</p> <p>23 from a potentially disabled person and what to do with</p> <p>24 it, then certainly we respond to questions. And so there</p> <p>25 is assistance that we give, but that's -- that's our</p>	<p style="text-align: right;">191</p> <p>1 with regard to -- some sort of supplemental or extra way</p> <p>2 with regard to voter ID or substantially similar name or</p> <p>3 whatever, then they can undertake that on the county</p> <p>4 level. That is not our responsibility, yes, ma'am.</p> <p>5 MS. WESTFALL: Okay.</p> <p>6 MR. ROSENBERG: Okay. Why don't we take a</p> <p>7 break until 2:00. Is that good? And then we'll continue</p> <p>8 with the other questioning.</p> <p>9 (Recess from 1:15 p.m. to 2:00 p.m.)</p> <p>10 EXAMINATION</p> <p>11 BY MR. BARON:</p> <p>12 Q. Good afternoon, Mr. Ingram. My name is Neil</p> <p>13 Baron. I'm one of the lawyers with the Veasey-LULAC</p> <p>14 group.</p> <p>15 A. Howdy.</p> <p>16 Q. I'm going to talk to you for a few minutes</p> <p>17 about substantially similar.</p> <p>18 A. Okay.</p> <p>19 Q. Before I go into that I wanted to -- I heard</p> <p>20 you testify earlier today that the Secretary of State's</p> <p>21 role is to implement the law that's passed by the</p> <p>22 legislature. Do you remember talking about that?</p> <p>23 A. I do.</p> <p>24 Q. And that you don't -- you're not an enforcement</p> <p>25 agency?</p>
<p style="text-align: right;">190</p> <p>1 role. Secretary of State is not an enforcement agency,</p> <p>2 it's not an investigative agency, it is a -- it is -- it</p> <p>3 is technical support for elections in Texas, and in that</p> <p>4 role we do assist counties with disability exemptions,</p> <p>5 you bet.</p> <p>6 Q. And what is -- I mean, that assistance is the</p> <p>7 questions? If a county has a question you will answer</p> <p>8 it, otherwise you let the counties administer it?</p> <p>9 A. And we -- we did the frequently asked questions</p> <p>10 that included a portion on disability exemption. As I</p> <p>11 recall, there were quite a few questions answered that we</p> <p>12 had received from counties that we figured needed a</p> <p>13 broader broadcast of answers to those questions.</p> <p>14 Q. I believe you testified earlier that voters who</p> <p>15 do not have appropriate SB 14 are the county's voters.</p> <p>16 It's the county's responsibility. Is that a correct</p> <p>17 summary of your testimony?</p> <p>18 A. No. I don't know what that is.</p> <p>19 Q. Well, with regard to registered voters who do</p> <p>20 not have a qualifying ID, that to the extent EICs are to</p> <p>21 be offered, it's the responsibility of the counties, it's</p> <p>22 the responsibility of DPS; is that correct?</p> <p>23 A. No, that -- if I gave that impression, then</p> <p>24 that's not what I meant to convey. What I mean to convey</p> <p>25 is that if a county wants to interact with its voters</p>	<p style="text-align: right;">192</p> <p>1 A. That is true.</p> <p>2 Q. And you supply technical assistance to counties</p> <p>3 that request it?</p> <p>4 A. That is true, as well as advisories</p> <p>5 prophylactic in nature.</p> <p>6 Q. So I was looking at your website, and it says</p> <p>7 that the Secretary of State serves as the chief election</p> <p>8 officer to assist county election officials to ensure</p> <p>9 uniform application and interpretation of election laws</p> <p>10 throughout Texas. Is that also one of your</p> <p>11 responsibilities?</p> <p>12 A. That is, 31.003 of the Election Code.</p> <p>13 Q. Uniformity?</p> <p>14 A. Uniformity.</p> <p>15 Q. And so --</p> <p>16 A. Obtain and maintain uniformity.</p> <p>17 Q. Okay. In the application, operation, and</p> <p>18 interpretation of the code, right?</p> <p>19 A. That's right.</p> <p>20 Q. So when we look at substantially similar, your</p> <p>21 office adopted 81.71, Texas Administrative Code.</p> <p>22 A. That's true.</p> <p>23 Q. I think back in 2011?</p> <p>24 A. The initial version of that rule was adopted in</p> <p>25 2011. There was an emergency version that was an</p>



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<p style="text-align: right;">193</p> <p>1 amendment thereto that was adopted before the November of</p> <p>2 2013 election, and subsequently that emergency version,</p> <p>3 as slightly modified, was finally adopted, I believe, two</p> <p>4 or three or four weeks ago.</p> <p>5 Q. The one I'm looking at here in front of me</p> <p>6 says: Amended to be effective April 3, 2014. Does that</p> <p>7 sound right to you?</p> <p>8 A. That sounds right.</p> <p>9 Q. And so looking through this I'm struck by the</p> <p>10 amount of discretion given to the election worker, and</p> <p>11 I want to talk to you about that for a few minutes.</p> <p>12 A. Sure.</p> <p>13 Q. With regard to substantially similar the rule</p> <p>14 says that if the name does not match exactly, the</p> <p>15 election worker shall refer to the standards in Section</p> <p>16 C. Do you want a copy of this in front of you to look</p> <p>17 at?</p> <p>18 A. I've got one.</p> <p>19 Q. I know you do, and it might be helpful. I</p> <p>20 promise not to spend too much time parsing words with</p> <p>21 you, but I do need to go over a few of these things.</p> <p>22 A. Sure.</p> <p>23 Q. So looking down there, it says a voter's name</p> <p>24 is considered substantially similar, and then it</p> <p>25 references those four examples, 1, 2, 3, and 4, right?</p>	<p style="text-align: right;">195</p> <p>1 what you refer to when you're talking about the on-line.</p> <p>2 We've got -- we've got several different --</p> <p>3 Q. The training materials that I've looked at</p> <p>4 on-line.</p> <p>5 A. Right. And I don't know what you've looked at.</p> <p>6 Q. Okay.</p> <p>7 A. Have you taken the on-line poll worker training</p> <p>8 course from start to finish or have you just reviewed a</p> <p>9 PowerPoint?</p> <p>10 Q. I reviewed the PowerPoints.</p> <p>11 A. Which PowerPoints?</p> <p>12 Q. I'll bring those up. Let's move on and I'll</p> <p>13 come back to that, okay?</p> <p>14 A. No, no, I'm just -- I'm asking because we've</p> <p>15 got several different publications and they've changed</p> <p>16 a little bit over time, but with regard to similar name</p> <p>17 they've been pretty consistent across -- across</p> <p>18 publications.</p> <p>19 Q. Okay. Well, let's -- I'll bring that up in a</p> <p>20 second and we'll come back to it while I keep on working</p> <p>21 my way through this part of the process.</p> <p>22 Do you agree that the election worker has</p> <p>23 total discretion to determine whether the name on the</p> <p>24 offered ID is not substantially similar to the official</p> <p>25 list of registered voters?</p>
<p style="text-align: right;">194</p> <p>1 A. I wouldn't call them examples. I think there</p> <p>2 are examples within those categories, but those are four</p> <p>3 different ways that we feel that names can be</p> <p>4 substantially similar, yes.</p> <p>5 Q. Sure. But, for example, to repeat myself,</p> <p>6 number 2 says it's for illustrative purposes only, right?</p> <p>7 A. That's right.</p> <p>8 Q. And it uses some terminology, for example, on</p> <p>9 C(1), slightly different.</p> <p>10 A. Right.</p> <p>11 Q. See that? On C(2), customary, right?</p> <p>12 A. Customary variation, yes, sir.</p> <p>13 Q. And so that's kind of in the eyes of the</p> <p>14 beholder, right? That's up to the election worker at the</p> <p>15 time the ID is presented.</p> <p>16 A. Right.</p> <p>17 Q. Are there any official Secretary of State</p> <p>18 publications, other than what I'm looking at here in</p> <p>19 Rule 81.71 and your on-line training, which has some more</p> <p>20 examples of names, like Lady Bird Johnson and William</p> <p>21 Clements and Earl C. Campbell -- I mean, I could bring</p> <p>22 them all out. Are there any official publications that</p> <p>23 give the election workers guidance on the definitions of</p> <p>24 slightly different or customary?</p> <p>25 A. I'm not sure what you mean and I don't know</p>	<p style="text-align: right;">196</p> <p>1 A. I don't know what that means, total discretion.</p> <p>2 Q. Okay. Can --</p> <p>3 A. And I don't know what it means when you say</p> <p>4 election worker. You're going to have to ask a specific</p> <p>5 question.</p> <p>6 Q. Okay. I thought that was a specific question.</p> <p>7 Election worker is defined in Rule 81.71. Take a look at</p> <p>8 81.71(b) right there on the first page.</p> <p>9 A. Right.</p> <p>10 Q. Talks about the reviewing early voting clerk,</p> <p>11 deputy early voting clerk, election judge, or election</p> <p>12 clerk collectively included in the term election worker.</p> <p>13 A. Sure.</p> <p>14 Q. So we can have an agreement today that when</p> <p>15 I say election worker that's what I'm referring to?</p> <p>16 A. Right. But I don't know what you mean when you</p> <p>17 say total discretion. There is a process that happens at</p> <p>18 a polling place when a voter presents themselves to vote,</p> <p>19 and in the process of qualifying a voter to vote there is</p> <p>20 a process that's gone through. So you would have</p> <p>21 initially an election clerk checking in a voter. If an</p> <p>22 election clerk had a question that they felt like they</p> <p>23 were unable to resolve or if they resolved the question</p> <p>24 and the voter was unhappy with that resolution, then they</p> <p>25 can appeal to the election judge in that polling</p>

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<p style="text-align: right;">197</p> <p>1 location. The election judge will then make a decision.</p> <p>2 If, for some reason, the voter or -- is not happy or the</p> <p>3 judge feels like they can't make a decision, then they</p> <p>4 can call the early voting clerk. So when you say total</p> <p>5 discretion, I don't know what that means with regard to</p> <p>6 the specific players in the polling place on election day</p> <p>7 qualifying the voter.</p> <p>8 Q. All right. Well, let's go through them one at</p> <p>9 a time, then, because your rule collectively calls them</p> <p>10 election workers.</p> <p>11 A. Sure.</p> <p>12 Q. So the early voting clerk would be a clerk</p> <p>13 who's employed during early voting, correct?</p> <p>14 A. No. An early voting clerk is typically the</p> <p>15 chief election official for the entity holding the</p> <p>16 election, so if it's a school district election it'll be</p> <p>17 the school superintendent; if it's a city, then it'll be</p> <p>18 the city secretary; if it's a county election it'll be</p> <p>19 the county clerk or the election administrator. So the</p> <p>20 early voting clerk changes depending on who's holding the</p> <p>21 election.</p> <p>22 Q. Okay. Tell me what you define the deputy early</p> <p>23 voting clerk as.</p> <p>24 A. Well, a deputy early voting clerk is somebody</p> <p>25 that works in the early voting clerk's office, whoever</p>	<p style="text-align: right;">199</p> <p>1 Q. So when the voter shows up, those people have</p> <p>2 the discretion to determine whether the voter's name on</p> <p>3 the ID that he offers, the SB 14 ID that he offers or she</p> <p>4 offers, is substantially similar to what the Secretary of</p> <p>5 State has on your OLRV, your official list of registered</p> <p>6 voters.</p> <p>7 A. Yeah. And really I don't mean to quibble, but</p> <p>8 the OLRV is a county document.</p> <p>9 Q. That's okay. We're here to quibble. That's</p> <p>10 okay.</p> <p>11 A. It's not a Secretary of State document.</p> <p>12 Q. All right.</p> <p>13 A. The OLRV is generated by the county and it --</p> <p>14 in the first instance, the election workers on scene have</p> <p>15 that discretion. They can -- if they have a question</p> <p>16 they can call the early voting clerk and talk to the</p> <p>17 clerk or one of their staff members, a deputy early</p> <p>18 voting clerk, and then, obviously, all of this gets</p> <p>19 reviewed by the voter registrar during the cure period,</p> <p>20 so the voter registrar then makes a recommendation to the</p> <p>21 early voting ballot board. The early voting ballot board</p> <p>22 is the one who makes the final decision, if someone had</p> <p>23 to vote provisionally, whether to accept that provisional</p> <p>24 ballot or not. So there is discretion in the first</p> <p>25 instance when a voter presents themselves, and that</p>
<p style="text-align: right;">198</p> <p>1 that is.</p> <p>2 Q. Election judge?</p> <p>3 A. Election judge is the one who has been</p> <p>4 appointed either for early voting or for election day by</p> <p>5 either -- either the entity holding the election or</p> <p>6 political party to be the election judge for a polling</p> <p>7 place.</p> <p>8 Q. And election clerk?</p> <p>9 A. Election clerks are people that the election</p> <p>10 judge picks to staff the polling location with him or</p> <p>11 her.</p> <p>12 Q. So when we go down to C where it talks about</p> <p>13 when a voter's name is considered substantially similar,</p> <p>14 it says that election workers should consider whether</p> <p>15 information on the presented ID document matches elements</p> <p>16 of the voter's information on the official list of</p> <p>17 registered voters, correct?</p> <p>18 A. That's right.</p> <p>19 Q. So election workers would include all of the</p> <p>20 people that we just talked about in B.</p> <p>21 A. That's right.</p> <p>22 Q. It would basically include anybody authorized</p> <p>23 to administer the election at the particular polling</p> <p>24 location.</p> <p>25 A. Yes.</p>	<p style="text-align: right;">200</p> <p>1 discretion we've encouraged them to exercise for the</p> <p>2 benefit of the voter, and if that voter is unhappy with</p> <p>3 that resolution at the polling location they will have</p> <p>4 the opportunity with the voter registrar and the early</p> <p>5 voting ballot board to change that outcome.</p> <p>6 Q. So let's talk about the voter registrar. Skip</p> <p>7 on down to Section J, the last portion of the rule where</p> <p>8 it says that in determining whether an ID document</p> <p>9 presented to the voter registrar -- this is based on a</p> <p>10 provisional ballot now.</p> <p>11 A. Right.</p> <p>12 Q. The voter registrar shall utilize the processes</p> <p>13 outlined in subsections C and D of this section, which</p> <p>14 takes you right back to where we just were, right?</p> <p>15 A. That's right.</p> <p>16 Q. So the voter registrar's decision is equally as</p> <p>17 discretionary as the election worker's --</p> <p>18 A. Sure.</p> <p>19 Q. -- in terms of whether that individual person</p> <p>20 thinks the name is substantially similar or not.</p> <p>21 A. That's right.</p> <p>22 Q. Now, is there an appeal process from a decision</p> <p>23 of the voter registrar to not count a vote?</p> <p>24 A. No.</p> <p>25 Q. That's a final decision, correct?</p>

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<p style="text-align: right;">201</p> <p>1 A. That is not a final decision, it's a</p> <p>2 recommendation that's made to the early voting ballot</p> <p>3 board. The early voting ballot board has the final</p> <p>4 decision.</p> <p>5 Q. Now, we have run a few elections in Texas under</p> <p>6 this new law.</p> <p>7 A. Yes, we have.</p> <p>8 Q. The November 2013 constitutional, the</p> <p>9 March 2014 primary, and a few school board bond election</p> <p>10 type elections, I think, in probably, what, September of</p> <p>11 2013?</p> <p>12 A. Yeah, in the November 2013 election on the</p> <p>13 uniform date there were local elections across the state,</p> <p>14 so there were city and school district elections as well</p> <p>15 as the constitutional amendment election, so it was a</p> <p>16 uniform date available for elections to be held, and</p> <p>17 quite a few entities across the state took advantage of</p> <p>18 the availability of that date. In addition to the</p> <p>19 uniform election date on the first Tuesday in November of</p> <p>20 2013 and the March primary we have had several school</p> <p>21 districts have tax ratification/tax rollback elections</p> <p>22 that are not required to be held on a uniform date and we</p> <p>23 might have had a city council special election for a home</p> <p>24 rule city with four-year terms, and they can have those</p> <p>25 special elections that aren't on a uniform date according</p>	<p style="text-align: right;">203</p> <p>1 state, right?</p> <p>2 A. That is one of the goals of the office, yes,</p> <p>3 sir, statutory obligation.</p> <p>4 Q. Has there been any analysis conducted by the</p> <p>5 Secretary of State on the substantially similar</p> <p>6 combination form that's been used in these elections?</p> <p>7 A. I'm not sure I understand what that question</p> <p>8 means.</p> <p>9 Q. Has the Secretary of State gotten copies of</p> <p>10 these forms from the various counties to take a look at</p> <p>11 how substantially similar is being implemented?</p> <p>12 A. You're talking about the combo form where a</p> <p>13 voter signs in?</p> <p>14 Q. Yes.</p> <p>15 A. We have not made a practice of looking at combo</p> <p>16 forms. Occasionally we'll get a combo form when someone</p> <p>17 makes an election law complaint regarding something</p> <p>18 that's on that form, so --</p> <p>19 Q. So the answer to my question is that you</p> <p>20 haven't, in the Secretary of State's Office anyway, taken</p> <p>21 a look at any of these combo forms from these elections</p> <p>22 in 2013 or 2014 since Senate Bill 14 was passed into law.</p> <p>23 A. No, we have not made a practice of procuring</p> <p>24 combo forms from the counties.</p> <p>25 Q. What about analyzing provisional ballots; have</p>
<p style="text-align: right;">202</p> <p>1 to Article 11, Section 11 of the constitution.</p> <p>2 Q. And although none of these elections are of the</p> <p>3 magnitude in terms of volume of voters as the</p> <p>4 presidential or gubernatorial, it is a fair number of</p> <p>5 elections, and particularly November and March 2013 and</p> <p>6 March 2014 took place in every county across the state,</p> <p>7 correct?</p> <p>8 A. That's right. I can't -- I hesitate because</p> <p>9 the primary is the party -- the political party primary,</p> <p>10 and so there's some counties that didn't have a</p> <p>11 Democratic Primary because there wasn't a party chair to</p> <p>12 put on election. There are some counties that didn't</p> <p>13 have a Republican Primary. I'm not aware of any county</p> <p>14 that didn't have both party chairs and didn't have a</p> <p>15 primary at all, but it could be that there was such a</p> <p>16 county. I just -- I don't think there was in 2014. I</p> <p>17 know for 2012 primary election that in the runoff</p> <p>18 Sterling County didn't have a runoff at all because both</p> <p>19 party chairs quit between the runoff and the primary.</p> <p>20 Q. So with the possible exception of a county or</p> <p>21 two, every county has had an opportunity to administer a</p> <p>22 couple of elections under this new law.</p> <p>23 A. I believe so, yes, sir.</p> <p>24 Q. And we agree that part of the SOS' mission is</p> <p>25 to ensure uniform administration of elections across the</p>	<p style="text-align: right;">204</p> <p>1 you taken a look at any of those?</p> <p>2 A. I don't know if we've seen any, but we</p> <p>3 certainly haven't made a practice of pulling provisional</p> <p>4 ballots from counties and looking at them.</p> <p>5 Q. What, if anything, have -- has, so that I don't</p> <p>6 ask you personally, the Secretary of State's Office done</p> <p>7 to analyze and ensure that the counties and the election</p> <p>8 workers are implementing Senate Bill 14 uniformly across</p> <p>9 the state with regard specifically to the substantially</p> <p>10 similar name issue?</p> <p>11 A. I don't know -- it seems like you have a</p> <p>12 misconception of the Secretary of State's role. As I --</p> <p>13 as I said to Ms. Westfall before, we are not an</p> <p>14 enforcement agency.</p> <p>15 MR. BARON: I'm going to object as</p> <p>16 nonresponsive.</p> <p>17 A. Can I answer your question, sir?</p> <p>18 Q. If you get around to answering it, that'll be</p> <p>19 fine.</p> <p>20 A. I'm answering your question.</p> <p>21 Q. Okay.</p> <p>22 A. It comes in a context. All of this comes in a</p> <p>23 context, and the context is that our office has a 1-800</p> <p>24 number available to county election officials and it has</p> <p>25 a 1-800 number available to voters, and every single</p>

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<p style="text-align: right;">205</p> <p>1 voter registration certificate has on it that 1-800</p> <p>2 number for the voters to use, and so we have a feedback</p> <p>3 loop that is phenomenal from voters and from election</p> <p>4 officials, and if there is an issue with regard to some</p> <p>5 portion of the administration of an election we hear</p> <p>6 about it. We hear about it quickly. And so I don't know</p> <p>7 the best way to tell you this, but if there was an issue</p> <p>8 with regard to the implementation of the substantially</p> <p>9 similar name rules we would have heard about it, and we</p> <p>10 haven't heard about it at all, not from a voter and not</p> <p>11 from an election official. There hasn't been any issue</p> <p>12 raised with our office with regard to substantially</p> <p>13 similar names, and so it is our belief, our strong</p> <p>14 belief, that there hasn't been any problem with regard to</p> <p>15 the implementation of the substantially similar name</p> <p>16 rules.</p> <p>17 Now, if we were wrong in that regard and</p> <p>18 if we were hearing about voters who were being</p> <p>19 disenfranchised because they were wrongly believed to</p> <p>20 have their name not be substantially similar, then we</p> <p>21 would take action in that regard same as we do whenever</p> <p>22 we hear that a voter doesn't have a provisional ballot</p> <p>23 offered to them. If we hear that a voter has not been</p> <p>24 offered the opportunity to vote provisionally, the voter</p> <p>25 calls and they're upset, we will immediately call that</p>	<p style="text-align: right;">207</p> <p>1 A. That is right.</p> <p>2 Q. I believe you get those calls. Having been a</p> <p>3 frequent caller to the Secretary of State's Office</p> <p>4 myself, I have absolutely no reason to doubt that you</p> <p>5 guys get thousands of calls, but I want to ask you a</p> <p>6 slightly different question. Are those logged?</p> <p>7 A. No, not generally as a matter of course.</p> <p>8 However, on election day whenever we -- we put together</p> <p>9 a phone bank and -- the lawyers and some of the other</p> <p>10 voter registration people in my office, we put computers</p> <p>11 and phones in a conference room and we collectively take</p> <p>12 phone calls in that room all day, and those calls are</p> <p>13 logged into an access database. So the election day</p> <p>14 phone calls are logged.</p> <p>15 Q. And are those maintained?</p> <p>16 A. Yes.</p> <p>17 Q. So those would be available for us? There</p> <p>18 would be a log of those types of calls from election day?</p> <p>19 A. There should be.</p> <p>20 Q. Any other time period?</p> <p>21 A. You know, sometimes if we get a phone call from</p> <p>22 a place, the lawyers, if they don't know the answer right</p> <p>23 off, will send an e-mail to the other lawyers asking</p> <p>24 about, you know, I got this phone call, this is the</p> <p>25 question, what do we -- what do we say back to the</p>
<p style="text-align: right;">206</p> <p>1 county on election day, during the early voting period,</p> <p>2 whenever it happens, and we will tell that county, this</p> <p>3 is the complaint we received from the voter, this is the</p> <p>4 place where they tried to vote, you need to make sure</p> <p>5 that those poll workers understand that they need to</p> <p>6 offer a voter a provisional ballot, they can't make that</p> <p>7 decision for the voter. And so that is the way this</p> <p>8 process works from our perspective.</p> <p>9 Q. Have you completed your answer?</p> <p>10 A. I think so.</p> <p>11 MR. BARON: Okay. I'm going to object as</p> <p>12 nonresponsive.</p> <p>13 Q. I just want to verify that the Secretary of</p> <p>14 State's Office has not analyzed any of the combo forms</p> <p>15 for the substantially similar sign-in sheets/affidavits</p> <p>16 or the provisional ballots that have been cast in any of</p> <p>17 the elections held in Texas since the implementation of</p> <p>18 SB 14. Correct?</p> <p>19 A. And as I said previously, we have not made a</p> <p>20 practice of pulling combo forms or provisional ballots</p> <p>21 from the counties with regard to those elections.</p> <p>22 Q. And you're relying, I guess, on the lack of</p> <p>23 phone complaints you receive from I think what you said</p> <p>24 earlier in your deposition was literally thousands of</p> <p>25 calls per month?</p>	<p style="text-align: right;">208</p> <p>1 county, and so we could have an indirect reference to</p> <p>2 phone calls that way.</p> <p>3 Q. Of the thousands of calls you get a month, who</p> <p>4 categorizes the subject matter of the calls? I mean,</p> <p>5 you --</p> <p>6 A. The caller does.</p> <p>7 Q. Sure. But at the Secretary of State's Office.</p> <p>8 I mean, you said they're not about substantially similar</p> <p>9 name problems, for example.</p> <p>10 A. Uh-huh.</p> <p>11 Q. Who takes those calls and who categorizes them?</p> <p>12 How do you know what they're about?</p> <p>13 A. Sure. That's a fair question. My office is</p> <p>14 right outside the receptionist area where we have three</p> <p>15 receptionists whose full-time job is to answer phone</p> <p>16 calls, so I hear them talking. In addition, the phone</p> <p>17 calls that we receive if the frontline receptionist can't</p> <p>18 answer the question for the voter will go through to</p> <p>19 either voter registration or electronic funds management</p> <p>20 or the legal division for resolution, and I meet weekly</p> <p>21 with my managers for those sections and we talk about</p> <p>22 what's going on, and one of the things that we talk</p> <p>23 about -- my -- my administration manager, Louri O'Leary,</p> <p>24 one of the things that she'll talk about is call volume</p> <p>25 and the nature of the calls, but we don't keep a record</p>

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<p style="text-align: right;">209</p> <p>1 of what calls come in with regard to what. But</p> <p>2 whenever -- whenever the voter registration certificates</p> <p>3 are mass-mailed out, you know, you can hear that a lot of</p> <p>4 the calls are about the voter registration certificate</p> <p>5 and, you know, the information that's on it, so that's</p> <p>6 the questions that the receptionists are answering</p> <p>7 primarily, and there has never been a time where the</p> <p>8 topic of the phone calls has been problems with similar</p> <p>9 name implementation at the polling place.</p> <p>10 There have been calls and there have been</p> <p>11 periods where the phone calls have been about,</p> <p>12 prospectively, I'm going to go vote, I'm afraid I won't</p> <p>13 be able to because my name doesn't match. We had a whole</p> <p>14 bunch of those calls, and so that was before the November</p> <p>15 of 2013 election, but there hasn't been any calls</p> <p>16 retrospectively or during the active voting about an</p> <p>17 issue regarding substantially similar name, and there</p> <p>18 would have been if there was a problem. That I can</p> <p>19 promise you.</p> <p>20 Q. The combo forms would tell us whether the</p> <p>21 election workers are implementing substantially similar</p> <p>22 name policy correctly, right?</p> <p>23 A. I don't know if they would or not. I don't</p> <p>24 think so. I don't know why you think that.</p> <p>25 Q. Well, I guess when I went to vote with my ID,</p>	<p style="text-align: right;">211</p> <p>1 made to vote provisionally, that would be of some value</p> <p>2 in this -- in this regard, yes, sir.</p> <p>3 Q. And do you know how many provisional ballots</p> <p>4 were cast as a result of the March 2014 primary</p> <p>5 elections?</p> <p>6 A. I do not.</p> <p>7 Q. Do you reside in Travis or Williamson?</p> <p>8 A. Williamson.</p> <p>9 Q. Do you have any idea how many were cast in</p> <p>10 Williamson?</p> <p>11 A. For the March primary I haven't asked Jason</p> <p>12 that question. I think it was something like 25 for</p> <p>13 November. I can text him right now if you want me to.</p> <p>14 Q. Well, I think you're familiar with</p> <p>15 Bill Sargent, right?</p> <p>16 A. I am.</p> <p>17 Q. My elections administrator?</p> <p>18 A. I am familiar with Sarge.</p> <p>19 Q. We're going to come back to Sarge in a few</p> <p>20 minutes. I think we had 160 in Galveston --</p> <p>21 A. Okay.</p> <p>22 Q. -- in the primaries, I think 25 in the</p> <p>23 Democratic Primary and 120 or 130 in the Republican</p> <p>24 Primary.</p> <p>25 A. Total provisional ballots?</p>
<p style="text-align: right;">210</p> <p>1 which is Neil G. Baron, and my voter registration was</p> <p>2 Neil Geoffrey Baron, I had to initial the affidavit.</p> <p>3 A. Sure.</p> <p>4 Q. So it would seem to me that that would identify</p> <p>5 the fact that I had a substantially similar name issue</p> <p>6 that was correctly addressed, because middle initial</p> <p>7 versus full middle name is one of the specific examples</p> <p>8 in 81.71, right?</p> <p>9 A. That's right. But that's of no informational</p> <p>10 value to my office in determining whether there's a</p> <p>11 problem to correct. That is -- that is -- that is all</p> <p>12 the way it's supposed to be. What would indicate there's</p> <p>13 a problem to my office that would need to be corrected</p> <p>14 either with the local officials with regard to their poll</p> <p>15 worker training or something else would be if people are</p> <p>16 made to vote provisionally when their name is Neil</p> <p>17 J. Baron instead of Neil Jefferson Baron. That's when I</p> <p>18 would know we had a problem, and that would be of value</p> <p>19 to determine whether or not additional training would be</p> <p>20 necessary.</p> <p>21 Q. And so the better documents to analyze, from</p> <p>22 what you're telling me, would be the provisional ballots.</p> <p>23 A. If there were provisional ballots where someone</p> <p>24 had a substantially similar name or what we would</p> <p>25 consider to be a substantially similar name and they were</p>	<p style="text-align: right;">212</p> <p>1 Q. Yes.</p> <p>2 A. Okay.</p> <p>3 Q. About 160.</p> <p>4 A. Yeah, I think I heard 154 for Galveston, but --</p> <p>5 Q. I'm probably -- I'm rounding up. If you were</p> <p>6 to just extrapolate that statewide you would think there</p> <p>7 would have been multiple thousands of provisional ballots</p> <p>8 cast statewide at least.</p> <p>9 A. For the primary I believe there were several</p> <p>10 thousand. I think there was maybe 3,000 or 4,000 right</p> <p>11 here in Travis County. They were not ID related.</p> <p>12 Q. And I guess my question there is, if you</p> <p>13 haven't analyzed them how do you know?</p> <p>14 A. Because I can read the news and I can talk to</p> <p>15 Travis County election officials and I can talk to Sarge</p> <p>16 Q. And so that would be a better source of</p> <p>17 information than the provisional ballots themselves?</p> <p>18 A. No.</p> <p>19 Q. So you -- prior to the implementation of</p> <p>20 Senate Bill 14 you did receive concerns expressed in</p> <p>21 e-mails and letters -- or the Secretary of State's</p> <p>22 Office?</p> <p>23 A. Sure.</p> <p>24 (Exhibit No. 24 marked)</p> <p>25 Q. I mean, for example, I'm just going to hand you</p>



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<p style="text-align: right;">213</p> <p>1 what's been marked as Exhibit 24, which is an 2 October 2011 letter to Ann McGeehan. It's fair to say 3 that this is an example of several types of 4 correspondence that's been received by the Secretary of 5 State's Office from 2011 continuing pretty much into the 6 end of last year, right?</p> <p>7 <b>A. I agree with that. As a matter of fact, I got 8 some correspondence yesterday similar to this, but it 9 wasn't exactly like this. It was about similar names 10 being inappropriately applied. But yes.</b></p> <p>11 Q. Okay. And since we're taking Sarge's name in 12 vain, I'll let you take a look at -- keep that. I'm 13 going to ask you a couple of general questions about 14 these three or four documents I'm going to give you. 15 (Exhibit No. 25 marked)</p> <p>16 Q. This is the Sarge e-mail and this is an 17 e-mail -- it's several e-mails, but the one at the bottom 18 of the page -- or in the middle of the page from 19 Melanie Huff to Betsy Schonhoff with the last paragraph 20 about Sarge making the classic mistake of ensuring 21 identity. 22 (Exhibit No. 26 marked)</p> <p>23 Q. Exhibit 26 is another e-mail from Elizabeth 24 Winn to Melanie Huff referencing concerns about giving 25 the election worker what's essentially unfettered</p>	<p style="text-align: right;">215</p> <p>1 voter registration function out of the two separate 2 county offices and combine them in one office under a 3 person who's actually named an election administrator 4 under Chapter 31 of the code.</p> <p>5 Q. Fair enough. Regardless, there are at least 6 254 different people running elections in the 254 7 counties in the state of Texas.</p> <p>8 <b>A. Well, sort of. It depends upon what election 9 we're talking about. You know, if you've got the primary 10 election that we just had, some of those the county runs 11 for the parties, some of those the parties run for 12 themselves, and so you can have a lot more than 254 13 during a primary. You also have elections where, like 14 the November constitutional amendment election, the 15 county can be running a constitutional amendment election 16 at the same time entities are running a separate local 17 entity election. So yeah, I would say at least 254.</b></p> <p>18 Q. At least and probably more.</p> <p>19 <b>A. Right.</b></p> <p>20 Q. And quite a few concerns have been regularly 21 raised about this issue with substantially similar.</p> <p>22 <b>A. I don't -- I don't know what time period you're 23 talking about.</b></p> <p>24 Q. Well, the e-mails that I've handed you so far 25 run from -- there's one in August of 2011, one in January</p>
<p style="text-align: right;">214</p> <p>1 discretion.</p> <p>2 So we've got 254 counties in the state, 3 some with hardly anybody living in them and some with 4 multiple millions of people, right?</p> <p>5 <b>A. That's right.</b></p> <p>6 Q. We've got some counties where the tax assessor 7 is also the voter registrar, some counties where the 8 county clerk is the voter registrar, some counties where 9 they've actually, like Galveston, created an elections 10 administration position, right?</p> <p>11 <b>A. Galveston has not created an election 12 administration position.</b></p> <p>13 Q. Well, Sarge is the -- he works for the county 14 clerk, but he is the elections administrator.</p> <p>15 <b>A. He is the deputy at the clerk's office that 16 deals with elections; however, the tax 17 assessor-collector, Cheryl Johnson, is in charge of voter 18 registration.</b></p> <p>19 Q. She is in charge of voter registration, that's 20 correct, but Sarge runs the elections. But I won't get 21 into an argument with you about Galveston County. 22 Throughout the state there are counties that have 23 election administrators.</p> <p>24 <b>A. Right. And the point of an election 25 administrator is to take the election function and the</b></p>	<p style="text-align: right;">216</p> <p>1 of 2013, one in October of 2011. 2 (Exhibit No. 27 marked)</p> <p>3 Q. I actually neglected to hand you the Caroline 4 Geppert e-mail, Exhibit 27, dated October 21, 2013.</p> <p>5 <b>A. Okay.</b></p> <p>6 Q. I think you testified that in advance of these 7 elections there were regular calls from voters concerned 8 about problems they might have with this substantial 9 similarity issue, correct?</p> <p>10 <b>A. That -- that is exactly correct, and that is my 11 point with regard to nailing down the time frame. Most 12 of these exhibits that you've shown me have to do with 13 before Shelby County even came down, so there hadn't been 14 any communication with the counties other than 81.71 15 about what substantially similar name meant or how to 16 exercise their discretion at the polling place. We 17 hadn't had a county election officials seminar that we 18 did in July of 2013, we hadn't had any PowerPoint 19 presentations, and we hadn't done any poll worker 20 training modifications, and so all of that was very 21 preliminary, very prophylactic. I will say that on my 22 first day, whenever I first joined the Secretary of 23 State's Office, January 5, 2012, I had a meeting with 24 Elizabeth Winn, and Elizabeth Winn was the legal director 25 at the time and she told me, she said, Keith, the problem</b></p>

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<p style="text-align: right;">217</p> <p>1 with voter ID is not going to be people not having IDs,  2 the problem with voter ID is going to be substantially  3 similar names. So substantially similar names was very  4 much on people's minds going into the process.  5 However -- and it became -- it became a factor in the  6 public's mind with some news reports primarily from  7 Judge Watson in Corpus Christi who had raised it with her  8 local news media, so then that's when we started getting  9 e-mails like this one to Caroline worrying about whether  10 or not they were going to have a problem voting. And I  11 want to emphasize that people are not bashful about  12 contacting our office about issues that they perceive  13 with regard to the election process, and since elections  14 have actually happened there has been no complaints with  15 regard to the implementation of substantially similar  16 name. It has been a non-factor. So with regard to how  17 it was going to be, people were very concerned and we had  18 a lot of communication about that. How it's actually  19 been, not a problem as far as we're concerned or as far  20 as we can tell.  21 Q. And you're relying totally on the anecdotal  22 information from your fielding of phone calls and not on  23 any data analysis.  24 A. We haven't done any data analysis from the  25 counties. However, I have talked to a lot of county</p>	<p style="text-align: right;">219</p> <p>1 Election Code. Since we don't have any budget for  2 investigation, we don't have any budget for enforcement,  3 what we can do is listen carefully to our constituents,  4 see if there's a problem that needs to be addressed and  5 to address it.  6 As an example, during early voting for the  7 primary, right in the middle of early voting we got  8 a phone call from a voter who said, I used my new VA card  9 to vote and they wouldn't take it, so that's how we  10 learned that the Veterans Affairs Administration had  11 issued a different form of the card. We immediately that  12 day sent out an advisory to all the counties, VA's got a  13 new card, this is what it looks like, please put it in  14 your list of acceptable forms of ID.  15 Q. Fair enough. We've gone over this several  16 times. The only documentation on the calls would be the  17 election day logs?  18 A. No, that's not what I said.  19 Q. Okay. Tell me what you said.  20 A. I said that sometimes we'll generate e-mails  21 about them, especially if there's a pattern of phone  22 calls, I'm getting a lot of phone calls about this,  23 should we issue an advisory. There'll be e-mails about  24 that.  25 Q. Okay. And as far as you know those logs are</p>
<p style="text-align: right;">218</p> <p>1 election officials about their provisional ballots and  2 asking them how it went, what were the issues, what came  3 up. Substantially similar name has not been an issue.  4 Some of the issues that we've heard from voters with  5 regard to substantially similar name as a result of these  6 two elections are the voters believe -- their -- their  7 belief that the poll workers were making them change  8 their name. They were still allowed to vote, they just  9 were offered the opportunity to change their name with a  10 name change form and they believed that the poll worker  11 was making them change the name, and they didn't want to  12 change their name on the voter registration, they wanted  13 to change their name on their driver license. So we've  14 heard some of those kind of complaints, but nobody that  15 was told they couldn't vote or had to vote a provisional  16 ballot because their name didn't match.  17 Q. Again, all based on anecdotal --  18 A. Based on a tool that we use --  19 Q. What tool is that?  20 A. -- in our office, and this is the feedback that  21 we get. If there is an issue that we hear three or four  22 or five or ten phone calls on, then we have a pretty good  23 indication that it's more widespread than that and we'll  24 issue an advisory. That is a very important tool in our  25 arsenal with regard to the implementation of the</p>	<p style="text-align: right;">220</p> <p>1 maintained by your office somewhere?  2 A. The access database for election day? You bet  3 Q. How would we get those?  4 A. I don't know. I guess you can make a request.  5 Q. What type of information is reflected in those  6 logs?  7 A. It depends on how much information the caller  8 gave us. Usually we'll have the caller's name or a  9 portion thereof, we'll have the county, we try to get the  10 precinct where they voted, and then the nature of the  11 problem, the complaint, the issue that they raised.  12 Q. Is that maintained in some kind of Excel  13 spreadsheet or something?  14 A. Access database.  15 Q. All right. Let's talk briefly about the  16 affidavit. Senate Bill 14 requires a voter who is  17 determined to be substantially similar to still sign an  18 affidavit to confirm that he or she is that person,  19 correct?  20 A. You're talking about 63.001(c)?  21 Q. Yeah, the bill itself.  22 A. Yeah, and it's codified at 63.001(c).  23 Q. Right. Yeah, sure. Let me pull my copy of it  24 out too, get specifically to the language. I just want  25 to talk about the process that was utilized to create the</p>

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<p style="text-align: right;">221</p> <p>1 combination form.</p> <p>2 A. Sure. Yeah, C says that if in making a</p> <p>3 determination under this subsection an election officer</p> <p>4 determines under standards adopted by the Secretary of</p> <p>5 State that the voter's name --</p> <p>6 THE REPORTER: Would you slow down.</p> <p>7 A. I'm sorry. I think the reading is boring, so I</p> <p>8 try to go through it quickly.</p> <p>9 If in making a determination under this</p> <p>10 subsection the election officer determines under</p> <p>11 standards adopted by the Secretary of State that the</p> <p>12 voter's name on the documentation is substantially</p> <p>13 similar to, but does not match exactly with, the name on</p> <p>14 the list, the voter shall be selected for voting under</p> <p>15 subsection (d) if the voter submits an affidavit stating</p> <p>16 that the voter is the person on the list of registered</p> <p>17 voters.</p> <p>18 Q. And I think starting in 2011, and probably</p> <p>19 continuing for a while, various people, including</p> <p>20 counties, raised concerns about the procedure that was</p> <p>21 going to be necessary to implement that.</p> <p>22 A. Well, I don't know --</p> <p>23 Q. The actual signing of an affidavit.</p> <p>24 A. Sure. And I don't know exactly what concerns</p> <p>25 might have been raised in that regard from counties</p>	<p style="text-align: right;">223</p> <p>1 combo form that would allow the voter to check a box, and</p> <p>2 I didn't feel like that was a sufficient attestation of</p> <p>3 an affidavit. I thought that at least initials needed to</p> <p>4 be given and not a checkmark, so I would not approve</p> <p>5 Harris County's proposed combo form for a checkmark.</p> <p>6 Q. And that was implemented pursuant to the</p> <p>7 Secretary of State's authority to adopt rules to</p> <p>8 essentially implement that statute, correct?</p> <p>9 A. That's right.</p> <p>10 Q. And that's an authority that you have?</p> <p>11 A. You bet.</p> <p>12 Q. That's part of your mission?</p> <p>13 A. That's right.</p> <p>14 Q. And so if there were other problems with</p> <p>15 implementation of this law, you would have the same</p> <p>16 ability to adopt rules or regulations in order to solve</p> <p>17 those problems, whatever they might be, correct?</p> <p>18 A. Well, it would depend. I mean, you know, if</p> <p>19 there's a substantive issue that somebody has, the</p> <p>20 legislature would have to address that. So I don't know</p> <p>21 what you're talking about. I can't really speak</p> <p>22 hypothetically.</p> <p>23 Q. Well, that's fair. You had previously</p> <p>24 testified that your role is to implement the law.</p> <p>25 A. That's right.</p>
<p style="text-align: right;">222</p> <p>1 because I arrived in the office on January 5, 2012, and</p> <p>2 the folks who were here before that aren't here anymore.</p> <p>3 But I will say that when I arrived the proposed form of</p> <p>4 the affidavit was a separate piece of paper that was --</p> <p>5 looked like an affidavit.</p> <p>6 Q. Going to be actually notarized.</p> <p>7 A. Well, the election judge has the discretion of</p> <p>8 a district court judge on election day, and so the</p> <p>9 election judge would be the one that would be actually</p> <p>10 attesting to all these signatures. But it would be a</p> <p>11 very troublesome process to have a separate piece of</p> <p>12 paper in the election kit that would now have to be used</p> <p>13 for who knows how many voters, and because of the power</p> <p>14 of the election judge to witness signatures I asked</p> <p>15 Elizabeth Winn at the time, why can't we just put this on</p> <p>16 the combo form; they used to -- before SB 14 they used to</p> <p>17 have to sign an affidavit that you've lost your</p> <p>18 certificate if you show up to vote with another form of</p> <p>19 ID besides your certificate, and that was on the combo</p> <p>20 form, why can't we do this that way. And I talked to</p> <p>21 Steve Rayburn in Tarrant County. He thought that would</p> <p>22 be a much better way to handle it, so that is what we</p> <p>23 started working toward with changing the combo form to</p> <p>24 add that as a place for the voter to initial. And</p> <p>25 Harris County wanted to use their own version of the</p>	<p style="text-align: right;">224</p> <p>1 Q. And this is an example of passing a rule to</p> <p>2 implement a portion of the law.</p> <p>3 A. This is an example of prescribing a form to</p> <p>4 implement a law.</p> <p>5 Q. I guess adjusting the technical definition of</p> <p>6 an affidavit.</p> <p>7 A. No, I don't believe we've adjusted the</p> <p>8 definition of an affidavit at all. We have prescribed</p> <p>9 the form of affidavit to take -- that it has to take,</p> <p>10 yes.</p> <p>11 Q. Right. Initials.</p> <p>12 A. That's right.</p> <p>13 Q. Versus a check.</p> <p>14 A. Versus a check.</p> <p>15 Q. Check is no good. Initials, in your opinion,</p> <p>16 were okay.</p> <p>17 A. Sufficient indication of intent.</p> <p>18 Q. Didn't think you needed the whole separate form</p> <p>19 signed by the voter in front of the elections official?</p> <p>20 A. No.</p> <p>21 Q. And that was done, again, pursuant to your</p> <p>22 authority to -- as the chief election officer of the</p> <p>23 state.</p> <p>24 A. That's right.</p> <p>25 Q. Okay. Let me talk to you briefly about the</p>

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<p style="text-align: right;">225</p> <p>1 OLRV, the official list of registered voters. You</p> <p>2 testified a little while ago that that's a county</p> <p>3 document?</p> <p>4 <b>A. That's right.</b></p> <p>5 Q. Generated from the TEAM database?</p> <p>6 <b>A. Not for all counties.</b></p> <p>7 Q. How many counties don't access TEAM, don't use</p> <p>8 TEAM to get their OLRV?</p> <p>9 <b>A. I don't know. Some of the off-line counties --</b></p> <p>10 <b>there's 39 off-line counties currently, but some of them</b></p> <p>11 <b>actually do generate their OLRV out of TEAM, some</b></p> <p>12 <b>generate it out of their proprietary voter registration</b></p> <p>13 <b>database, and I don't know which are which. I don't know</b></p> <p>14 <b>if we keep track of that.</b></p> <p>15 Q. Tell me -- it's my understanding that the</p> <p>16 source of data that the OLRV would need from TEAM was</p> <p>17 updated, and I think you testified earlier in response to</p> <p>18 Ms. Westfall's questions about how you adjusted the</p> <p>19 fields. Remember that testimony?</p> <p>20 <b>A. That we tightened up the name rules inside of</b></p> <p>21 <b>TEAM, yes.</b></p> <p>22 Q. So that you could be sure to have former names</p> <p>23 included in a specific order? Tell me -- tell me exactly</p> <p>24 what you did.</p> <p>25 MR. BARON: Well, strike that.</p>	<p style="text-align: right;">227</p> <p>1 <b>it done was so that voters looking themselves up before</b></p> <p>2 <b>the November election would be able to have good</b></p> <p>3 <b>information. We had our county election officials</b></p> <p>4 <b>seminar toward the end of July, I believe, and it was</b></p> <p>5 <b>after that seminar that we undertook this process.</b></p> <p>6 Q. Since it's been completed has it been tested</p> <p>7 for accuracy other than through the process of the</p> <p>8 election?</p> <p>9 <b>A. I -- I don't know -- I mean, we test things</b></p> <p>10 <b>before we implement them, so --</b></p> <p>11 Q. What did you do?</p> <p>12 <b>A. The voter registration team in my office, the</b></p> <p>13 <b>voter registration section, Betsy's group, they do all of</b></p> <p>14 <b>the assurance testing before -- before a software update</b></p> <p>15 <b>is put into production, so that testing would have</b></p> <p>16 <b>occurred before it went into production. Since it's gone</b></p> <p>17 <b>into production we have real world evidence as well. But</b></p> <p>18 <b>yeah, it seems to have done exactly what it was intended</b></p> <p>19 <b>to do.</b></p> <p>20 Q. And tell me in your opinion what that was.</p> <p>21 MR. KEISTER: Objection. Are you asking</p> <p>22 for his personal opinion or the Secretary of State's?</p> <p>23 Q. In the context of the Secretary of State's</p> <p>24 Office what was the intent or the purpose of it?</p> <p>25 <b>A. Right. And the intent is what I just said,</b></p>
<p style="text-align: right;">226</p> <p>1 Q. Just tell me what you did. We'll take out</p> <p>2 exactly, okay?</p> <p>3 <b>A. Yeah, because technically I have no earthly</b></p> <p>4 <b>idea. The mission that was given to the IT department</b></p> <p>5 <b>with regard to TEAM was to make it so that someone's</b></p> <p>6 <b>official list of registered voters name would appear over</b></p> <p>7 <b>the mailing address on their voter registration</b></p> <p>8 <b>certificate, would appear on Am I Registered if they</b></p> <p>9 <b>looked themselves up, and would appear on the OLRV in</b></p> <p>10 <b>exactly the same way. So I don't know how the technical</b></p> <p>11 <b>people made that happen. I understand that the name</b></p> <p>12 <b>rules inside of TEAM with regard to fields for particular</b></p> <p>13 <b>names were not well defined prior to us making it well</b></p> <p>14 <b>defined in connection with this process that my voter</b></p> <p>15 <b>registration manager and I thought was necessary, and</b></p> <p>16 <b>part of our reason for thinking it was necessary is</b></p> <p>17 <b>because of input from the counties because they were</b></p> <p>18 <b>concerned that voters who wanted to look themselves up</b></p> <p>19 <b>would get two or three different answers.</b></p> <p>20 Q. When was that update completed?</p> <p>21 <b>A. I don't know.</b></p> <p>22 Q. I saw an e-mail that looked like it was being</p> <p>23 undertaken in August of last year. Does that sound about</p> <p>24 right?</p> <p>25 <b>A. It does. And the reason that we needed to get</b></p>	<p style="text-align: right;">228</p> <p>1 <b>that our office was of the opinion that a voter needed to</b></p> <p>2 <b>have the form of the name that was going to show up on</b></p> <p>3 <b>the official list of registered voters match at least one</b></p> <p>4 <b>of the names on the voter registration certificate as</b></p> <p>5 <b>well as the Am I Registered. The Am I Registered one is</b></p> <p>6 <b>the one that required the tweaking, and it had the</b></p> <p>7 <b>corollary benefit of tweaking the voter registration name</b></p> <p>8 <b>as well.</b></p> <p>9 Q. All right. Let me take you -- this is</p> <p>10 Exhibit 2, and I'm going to take you to page 42, go</p> <p>11 through a few things with you on this.</p> <p>12 <b>A. Sure.</b></p> <p>13 Q. Well, actually, if you look on page 40, I think</p> <p>14 that's where the question is. Sorry. So on page 44, the</p> <p>15 last paragraph talks about totality of circumstances.</p> <p>16 <b>A. Right.</b></p> <p>17 Q. You assisted in answering this question?</p> <p>18 <b>A. I did.</b></p> <p>19 Q. Okay. And so what this answer tells me is that</p> <p>20 totality of circumstances can only be used to assist the</p> <p>21 voter in determining that the name is substantially</p> <p>22 similar; is that correct?</p> <p>23 <b>A. That is correct.</b></p> <p>24 Q. Cannot be used to disqualify the voter --</p> <p>25 quote/unquote, disqualify as being not substantially</p>

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<p style="text-align: right;">229</p> <p>1 similar.</p> <p>2 <b>A. That's right.</b></p> <p>3 Q. So just as an example, if my name's not -- you</p> <p>4 know, Neil G. versus Neil Geoffrey -- I'll use the same</p> <p>5 example I've been using -- and my date of birth doesn't</p> <p>6 match, the election worker is supposed to ignore that?</p> <p>7 <b>A. I don't know what you mean. If your name</b></p> <p>8 <b>matches exactly --</b></p> <p>9 Q. No, we're not talking about -- right. I</p> <p>10 understand. But forget about matching exactly. We're</p> <p>11 talking about in the case of a non-exact match, so now</p> <p>12 we're making a substantially similar determination,</p> <p>13 right?</p> <p>14 <b>A. Right.</b></p> <p>15 Q. If my name doesn't match exactly, then that</p> <p>16 bounces us to is it substantially similar, correct?</p> <p>17 <b>A. That's right.</b></p> <p>18 Q. And then the election officer, the election</p> <p>19 worker, whichever one of these individuals it might be</p> <p>20 has the ability to look at address, date of birth, some</p> <p>21 of the other information to assist that official in</p> <p>22 determining whether the name is substantially similar,</p> <p>23 correct?</p> <p>24 <b>A. Right. And that's -- that's not exactly the</b></p> <p>25 <b>way I would picture the decision tree. If someone</b></p>	<p style="text-align: right;">231</p> <p>1 the election worker should -- doesn't say may, says</p> <p>2 should use the totality of circumstances method to verify</p> <p>3 the voter's identity, and then it goes on to talk about</p> <p>4 the election worker should compare all available</p> <p>5 information on the list of registered voters and the</p> <p>6 voter's identification, such as date of birth, address,</p> <p>7 and other information to assist in making a</p> <p>8 determination. That's what it -- that's what these</p> <p>9 answers say, right?</p> <p>10 <b>A. That's right.</b></p> <p>11 Q. So what you're saying here today is that if it</p> <p>12 obviously fits in one of these categories, like a middle</p> <p>13 initial or a former name, they shouldn't go with totality</p> <p>14 of circumstances, they should automatically conclude</p> <p>15 substantially similar exists.</p> <p>16 <b>A. That's right. That's the way we've taught it</b></p> <p>17 <b>to the counties, that's the way it's in the poll worker</b></p> <p>18 <b>training, that's the way I've given it in I don't know</b></p> <p>19 <b>how many speeches since this implementation has occurred.</b></p> <p>20 <b>So if I need to amend this answer so that it makes you</b></p> <p>21 <b>feel better, I'm glad to do that. This is not what we've</b></p> <p>22 <b>told the counties.</b></p> <p>23 Q. Okay. So the answers in these interrogatories</p> <p>24 are different than what you believe is being disseminated</p> <p>25 by your office to the counties?</p>
<p style="text-align: right;">230</p> <p>1 doesn't have an exact match and the only difference is</p> <p>2 there's a middle initial versus a middle name, then they</p> <p>3 don't need totality of the circumstances. That -- that's</p> <p>4 substantially similar. So totality of the circumstances</p> <p>5 only comes in when you've got something like Claudia</p> <p>6 Taylor Johnson versus Lady Bird Johnson. Then you've</p> <p>7 got -- then you've got to sort of go outside the name</p> <p>8 itself to determine whether or not this is the same</p> <p>9 person.</p> <p>10 What we've told the counties repeatedly is</p> <p>11 that the point from our office's perspective of SB 14 is</p> <p>12 to prevent in-person voter impersonation fraud. It's a</p> <p>13 measure to make sure that the person standing in front of</p> <p>14 you is the person who's on the official list of</p> <p>15 registered voters. And so from our perspective, if you</p> <p>16 can make that determination with the information that</p> <p>17 you've got in front of you, then give the benefit of the</p> <p>18 doubt to the voter and let them vote. It's only if there</p> <p>19 is no possible way to verify the identity of the voter</p> <p>20 from the identification provided that they vote</p> <p>21 provisionally.</p> <p>22 Q. But this is what confuses me, because I'm</p> <p>23 reading the sworn answers and it says if the election</p> <p>24 worker is trying to determine if a voter's name fits into</p> <p>25 one or more categories of substantially similar names,</p>	<p style="text-align: right;">232</p> <p>1 MR. KEISTER: Objection, that's</p> <p>2 mischaracterizing his answer in the interrogatory.</p> <p>3 MR. BARON: Well, let me clarify it. I'm</p> <p>4 not trying to -- this part, this section that we're</p> <p>5 talking about right here, this paragraph --</p> <p>6 MR. KEISTER: I know, but the following</p> <p>7 paragraph spells out what Mr. Ingram is trying to</p> <p>8 explain, and I think it's only fair to allow him to read</p> <p>9 that whole paragraph.</p> <p>10 <b>A. And my point is that I don't believe it's at</b></p> <p>11 <b>variance with what we've been telling the counties, and</b></p> <p>12 <b>my point is that if you've misunderstood our answer so</b></p> <p>13 <b>that it's not clear, then I am perfectly willing to amend</b></p> <p>14 <b>this answer to make it more clear so that you understand</b></p> <p>15 <b>exactly what we intended.</b></p> <p>16 Q. Well, it's not my understanding that I'm</p> <p>17 worried about, it's those more than 254 election</p> <p>18 administrators throughout Texas and the thousands upon</p> <p>19 thousands of election workers who are trying to implement</p> <p>20 this statute in a way that it sounds like you are trying</p> <p>21 to do to ensure that people --</p> <p>22 <b>A. Can vote.</b></p> <p>23 Q. -- get to vote.</p> <p>24 <b>A. And those election officials haven't read these</b></p> <p>25 <b>interrogatory answers. They've heard our training.</b></p>



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59 (Pages 233 to 236)

<p style="text-align: right;">233</p> <p>1 Q. So to get back to totality of circumstances, 2 regardless of when it's used, it's not supposed to be 3 used, as this answer says, to the detriment of the voter. 4 <b>A. That's right.</b> 5 Q. Which means that, again, if the election worker 6 isn't sure whether the name fits into one or more of the 7 categories of substantially similar names, the election 8 worker is supposed to look at the other information 9 that's available. 10 <b>A. Right, to assist the voter, not to their</b> 11 <b>detriment.</b> 12 Q. And only to benefit the voter. 13 <b>A. That's right.</b> 14 Q. Besides this interrogatory answer, where else 15 is that directive located? 16 <b>A. It's in all of our training materials, it's in</b> 17 <b>every speech we give, it's -- it is what we say. It's</b> 18 <b>what we say in our advisories, it's what we say in the</b> 19 <b>FAQ that's an exhibit to this deposition.</b> 20 Q. Is it in 81.71 somewhere? 21 <b>A. I don't know.</b> 22 Q. Part of the reason I ask that is because I -- 23 you're familiar with concerns that a number of voters, 24 particularly in Harris and Dallas County, I think for 25 sure, have default dates of birth because they registered</p>	<p style="text-align: right;">235</p> <p>1 <b>A. Yes. And it's -- it's not just the totality of</b> 2 <b>the circumstances. You know, we have voters who call us</b> 3 <b>on election day who say that they weren't allowed to vote</b> 4 <b>because their address didn't match on the driver license</b> 5 <b>and the official list of registered voters and their name</b> 6 <b>is an exact match. So this is not a situation where it's</b> 7 <b>just the totality of the circumstances. Some poll</b> 8 <b>workers just don't understand that the addresses don't</b> 9 <b>have to match, and so it's very important that they get</b> 10 <b>that information, and we try every way we can to make</b> 11 <b>sure that poll workers understand that, that the address</b> 12 <b>doesn't have to match.</b> 13 Q. All right. Again on totality of circumstances, 14 it also applies to the photographic identification. I'm 15 just looking at your answers. After the election workers 16 found the voter on the list of registered voters they 17 still have to compare the voter to the photo, right? 18 <b>A. It's what 63.001(d) calls verifying the</b> 19 <b>identity of the voter.</b> 20 Q. Right. And there they may use the totality of 21 circumstances to assist in verifying the voter's 22 identity? 23 <b>A. Right. If the pictures don't look a lot the</b> 24 <b>same, then they can use other information available to</b> 25 <b>them to help the voter.</b></p>
<p style="text-align: right;">234</p> <p>1 before HAVA. 2 <b>A. Sure.</b> 3 Q. So there's a fairly large number of people who 4 are still in the voter database, in the TEAM database, 5 whose dates of birth are probably not accurate, correct? 6 <b>A. Absolutely. I don't know if it's a lot. I</b> 7 <b>know that last I heard there was about 24,000 in Dallas.</b> 8 <b>And so I don't know, you know, out of a million</b> 9 <b>registered voters if that's a lot, but there are some,</b> 10 <b>you bet.</b> 11 Q. Sure. But we all -- 12 <b>A. We've heard about a situation down in Jim Wells</b> 13 <b>County from the 2012 election where somebody thought</b> 14 <b>there was voter fraud because several voters had, you</b> 15 <b>know, January 1, 1911, as their date of birth, and nobody</b> 16 <b>believed that many --</b> 17 Q. People would all be born on the same day? 18 <b>A. Right, and that old voting, and it was just</b> 19 <b>because that's the placeholder that was put in for people</b> 20 <b>who don't have a date of birth in the voter registration</b> 21 <b>database.</b> 22 Q. And so it's important -- that's another one of 23 those words your lawyer won't like. But it's important 24 that the totality of circumstances application be 25 understood very clearly, right?</p>	<p style="text-align: right;">236</p> <p>1 Q. And is that the same rule, only to the benefit 2 of the voter, or in that circumstance can totality of 3 circumstances be used to the detriment of the voter's 4 right to vote? 5 <b>A. No, it's the same thing. It's to help the</b> 6 <b>voter, not to -- not to count against him.</b> 7 Q. And is that information also contained in all 8 of your training materials? 9 <b>A. Sure.</b> 10 Q. A couple of other questions that aren't really 11 on substantially similar. The 25 mobile EIC units that 12 you talked about this morning? 13 <b>A. Sure.</b> 14 Q. Do you know whether any outside groups, True 15 The Vote, King Street Patriots, any of those independent 16 organizations were allowed at the EICs? 17 <b>A. I don't know what that means.</b> 18 Q. Were they allowed to be present in the EICs 19 when they were operable? 20 <b>A. Allowed?</b> 21 Q. Yes. 22 <b>A. It was not a closed area. Anybody was allowed.</b> 23 Q. Okay. I think you testified about this as well 24 this morning. But did the Secretary of State have any 25 specific goal in terms of number of days of advance</p>

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<p style="text-align: right;">237</p> <p>1 notice for when the EICs would be in place?</p> <p>2 <b>A. As much as we could manage.</b></p> <p>3 Q. So there was no specific goal, you just did as</p> <p>4 much as you could?</p> <p>5 <b>A. We tried to put it in as much advance as we</b></p> <p>6 <b>could so that the county would have the opportunity to</b></p> <p>7 <b>get information out to the news media and so that our</b></p> <p>8 <b>media office could put out a press release. We tried to</b></p> <p>9 <b>endeavor to have as much advance notice as possible.</b></p> <p>10 <b>Sometimes it wasn't possible to have much.</b></p> <p>11 MR. BARON: I'm going to pass the witness</p> <p>12 for now.</p> <p>13 EXAMINATION</p> <p>14 BY MR. BRAZIL:</p> <p>15 Q. You want to take a quick break or are you okay?</p> <p>16 <b>A. No, I'm fine.</b></p> <p>17 Q. All right. I'm going to jump around to save</p> <p>18 time. You've been here a long time, we've all been here</p> <p>19 a long time. So if I lose you along the way, just say</p> <p>20 stop, back up, slow down, okay?</p> <p>21 <b>A. Okay.</b></p> <p>22 Q. What is your understanding in your position as</p> <p>23 to the definition of provisional ballot? How do you</p> <p>24 understand that in your position as director of</p> <p>25 elections?</p>	<p style="text-align: right;">239</p> <p>1 Q. That's six days after that?</p> <p>2 <b>A. That's right.</b></p> <p>3 Q. Okay. And in what instances can they cure that</p> <p>4 provisional ballot in those six days?</p> <p>5 <b>A. If the reason for the provisional ballot was</b></p> <p>6 <b>some form of failure to present an acceptable form of</b></p> <p>7 <b>identification, that's a curable thing.</b></p> <p>8 Q. And they would have to bring the same type of</p> <p>9 photo ID within that six-day period that they would on</p> <p>10 election day, is that correct, to cure that.</p> <p>11 <b>A. I'm not sure I understand that question.</b></p> <p>12 Q. Well, let me ask it this way. Is there</p> <p>13 anything different they need to bring within that six-day</p> <p>14 period?</p> <p>15 <b>A. I still don't know if I understand the</b></p> <p>16 <b>question. Let me try. If --</b></p> <p>17 <b>Q. Tell me how they cure. Let me make it simple.</b></p> <p>18 <b>A. Right. It depends upon what the problem was,</b></p> <p>19 <b>but if the problem was that their picture was completely</b></p> <p>20 <b>different because they've had some sort of transgender</b></p> <p>21 <b>operation, they can bring a doctor note and say, this is</b></p> <p>22 <b>the reason my picture didn't match. We've got the things</b></p> <p>23 <b>that they can do to cure in 81.71. So if -- if it was a</b></p> <p>24 <b>name issue, they can present a marriage license to show</b></p> <p>25 <b>that their name has changed. Hopefully that won't happen</b></p>
<p style="text-align: right;">238</p> <p>1 <b>A. A provisional ballot is something that a voter</b></p> <p>2 <b>casts because there's some issue that prevents them from</b></p> <p>3 <b>casting a regular ballot.</b></p> <p>4 Q. And in order to cure that vote on the</p> <p>5 provisional ballot they have to do what?</p> <p>6 <b>A. Well, not all provisional ballots can be cured,</b></p> <p>7 <b>so I don't know -- if you're talking about specifically</b></p> <p>8 <b>ID provisional ballots, it depends upon the reason why</b></p> <p>9 <b>the ID provisional ballot was -- why the voter had to</b></p> <p>10 <b>vote that way. So if it's because they didn't have an ID</b></p> <p>11 <b>at all, then they need to bring an acceptable form of</b></p> <p>12 <b>photo ID. If it's because they were expired, then they</b></p> <p>13 <b>need to renew their form of photo ID. So I don't know --</b></p> <p>14 <b>I don't know how to answer that question.</b></p> <p>15 Q. Which of the categories can be cured in the</p> <p>16 six-day period? Let me ask it that way.</p> <p>17 <b>A. Well, it's not a six-day period.</b></p> <p>18 Q. Okay.</p> <p>19 <b>A. It's until six days after the election, so if</b></p> <p>20 <b>somebody votes the first day of early voting they've got</b></p> <p>21 <b>substantially more than six days to cure it. They've got</b></p> <p>22 <b>until --</b></p> <p>23 Q. Let's just assume in a normal election on</p> <p>24 election day.</p> <p>25 <b>A. Okay.</b></p>	<p style="text-align: right;">240</p> <p>1 <b>because that should be a substantially similar name. But</b></p> <p>2 <b>they can also -- if they've changed their name from,</b></p> <p>3 <b>let's say, Keith Ingram to Squirrel Period, then they can</b></p> <p>4 <b>show the court order changing their name to</b></p> <p>5 <b>Squirrel Period and they'll be allowed to vote. They can</b></p> <p>6 <b>bring a letter from a doctor saying that they're</b></p> <p>7 <b>undergoing transgender operations. They can also -- if</b></p> <p>8 <b>they don't have any of these and they don't have -- and</b></p> <p>9 <b>they haven't renewed their driver license or whatever,</b></p> <p>10 <b>they can sign an affidavit at the voter registrar's</b></p> <p>11 <b>office that says they're the same person on the official</b></p> <p>12 <b>list of registered voters.</b></p> <p>13 Q. And who is the person that has the authority to</p> <p>14 make that determination within that six-day period?</p> <p>15 <b>A. The voter --</b></p> <p>16 Q. Is it only the voter registrar or is there</p> <p>17 someone else?</p> <p>18 <b>A. Well, the voter registrar is the one that the</b></p> <p>19 <b>voter will interact with during the six-day period, the</b></p> <p>20 <b>voter registrar or one of their employees in the office,</b></p> <p>21 <b>so it could be a deputy voter registrar, and then the</b></p> <p>22 <b>early voting ballot board will make the final decision on</b></p> <p>23 <b>the ballot.</b></p> <p>24 Q. Will they get a recommendation from the</p> <p>25 registrar?</p>

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<p style="text-align: right;">241</p> <p>1 <b>A. They will.</b></p> <p>2 <b>Q. And then they will make the ultimate decision</b></p> <p>3 <b>on whether or not to count that vote?</b></p> <p>4 <b>A. That's right.</b></p> <p>5 <b>Q. Now, is there any -- and you may have answered</b></p> <p>6 <b>this. Is there any analysis or any procedure for the</b></p> <p>7 <b>Secretary of State's Office after an election to gather</b></p> <p>8 <b>in a central location information from all the 254</b></p> <p>9 <b>counties on the individual problems with provisional</b></p> <p>10 <b>ballots or the provisional ballots themselves?</b></p> <p>11 <b>A. No.</b></p> <p>12 <b>Q. So just so that I'm clear, there's no database</b></p> <p>13 <b>that the Secretary of State's Office has or generates</b></p> <p>14 <b>after an election to say, okay, we had this many</b></p> <p>15 <b>provisional ballots statewide because of A, B, C?</b></p> <p>16 <b>A. No.</b></p> <p>17 <b>Q. Has there ever been a suggestion that the</b></p> <p>18 <b>Secretary of State's Office do that type of tracking or</b></p> <p>19 <b>recording of provisional ballots?</b></p> <p>20 <b>A. I don't know. You know, there's a -- there's</b></p> <p>21 <b>a bit of an issue with that sort of thing because of</b></p> <p>22 <b>secrecy of the ballot. In some counties there aren't</b></p> <p>23 <b>very many provisional ballots and the counties -- you</b></p> <p>24 <b>know, we -- we give them the opportunity to list</b></p> <p>25 <b>provisional ballots accepted in their voter history</b></p>	<p style="text-align: right;">243</p> <p>1 <b>Q. So the next time that information would exist</b></p> <p>2 <b>would be at the end of '14?</b></p> <p>3 <b>A. Right. And the EAC will probably have it from</b></p> <p>4 <b>us -- I don't know -- by February or early March of 2015.</b></p> <p>5 <b>Q. And what under SB 14 is the reporting</b></p> <p>6 <b>requirements for the county with regard to provisional</b></p> <p>7 <b>ballots? Is there any reporting requirement?</b></p> <p>8 <b>A. No, not that I'm aware of.</b></p> <p>9 <b>Q. So there's no aspect of SB 14 where the county</b></p> <p>10 <b>has to, after a general election or after any election,</b></p> <p>11 <b>report to the Secretary of State provisional ballots or</b></p> <p>12 <b>problems with provisional ballots?</b></p> <p>13 <b>A. That's right.</b></p> <p>14 <b>Q. Now, the affidavits that can be completed, for</b></p> <p>15 <b>example, a natural disaster affidavit, I think there's</b></p> <p>16 <b>one for a religious objection to having your photograph</b></p> <p>17 <b>taken, how are those handled? Are those handled on</b></p> <p>18 <b>election day by the election officials or are they</b></p> <p>19 <b>handled as a provisional ballot after the election?</b></p> <p>20 <b>A. That's part of the cure process for a</b></p> <p>21 <b>provisional ballot based on ID.</b></p> <p>22 <b>Q. And same question with regard to those</b></p> <p>23 <b>affidavits. Is there any compilation by the Secretary of</b></p> <p>24 <b>State's Office or any analyzation of that or any database</b></p> <p>25 <b>created as a result of those?</b></p>
<p style="text-align: right;">242</p> <p>1 <b>report that's required by the legislature, and some of</b></p> <p>2 <b>them don't do it that way, they'll do it as a regular</b></p> <p>3 <b>election day vote or an early vote because they don't</b></p> <p>4 <b>want -- there's only one or two ballots and they don't</b></p> <p>5 <b>want to compromise the secrecy of the ballot. So I don't</b></p> <p>6 <b>know if anybody has ever suggested that the Secretary of</b></p> <p>7 <b>State gather this information regarding provisional</b></p> <p>8 <b>ballots after an election, but if they did I can imagine</b></p> <p>9 <b>a situation where some counties, especially smaller</b></p> <p>10 <b>counties, would express concerns with that and would want</b></p> <p>11 <b>to make sure that there were adequate protections in</b></p> <p>12 <b>place regarding the voters and the secrecy of their</b></p> <p>13 <b>ballot. There is a thing that happens at the end of</b></p> <p>14 <b>every even-numbered year called the Election Assistance</b></p> <p>15 <b>Commission Survey, and the federal voting assistance</b></p> <p>16 <b>program also does a survey -- this year they're going to</b></p> <p>17 <b>be combined for the first time -- and a lot of the</b></p> <p>18 <b>questions with regard to provisional ballots are included</b></p> <p>19 <b>in that survey. So there is general information</b></p> <p>20 <b>regarding provisional ballots that were done during early</b></p> <p>21 <b>voting, that were done on election day and that were</b></p> <p>22 <b>rejected and that were accepted. There is a database</b></p> <p>23 <b>with regard to globally, but that's only in even-numbered</b></p> <p>24 <b>years and it's only at the end of the year with the EAC</b></p> <p>25 <b>survey.</b></p>	<p style="text-align: right;">244</p> <p>1 <b>A. No.</b></p> <p>2 <b>Q. So you could not tell us in your position how</b></p> <p>3 <b>many people filed an affidavit, for example, with a</b></p> <p>4 <b>religious objection?</b></p> <p>5 <b>A. That's right. Not unless I ask all the</b></p> <p>6 <b>counties.</b></p> <p>7 <b>Q. I'm sorry?</b></p> <p>8 <b>A. Not unless I ask all the counties.</b></p> <p>9 <b>Q. Now, just so that I'll understand a couple of</b></p> <p>10 <b>the databases -- for example, the DPS has a database that</b></p> <p>11 <b>you spoke of earlier, correct?</b></p> <p>12 <b>A. Yes.</b></p> <p>13 <b>Q. And is there a separate CHL database as well?</b></p> <p>14 <b>A. I don't know.</b></p> <p>15 <b>Q. Do you know whether or not the DPS database</b></p> <p>16 <b>includes the CHLs? And you know what I mean by CHL,</b></p> <p>17 <b>right?</b></p> <p>18 <b>A. Sure, concealed handgun license. But what I</b></p> <p>19 <b>don't know is if DPS has a database with those combined.</b></p> <p>20 <b>We don't have access to a database with those combined.</b></p> <p>21 <b>Q. Okay. And the TEAM is a database of what?</b></p> <p>22 <b>A. Registered voters.</b></p> <p>23 <b>Q. That is maintained by the Secretary of State?</b></p> <p>24 <b>A. That's right.</b></p> <p>25 <b>Q. Are there any other databases that we haven't</b></p>

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<p style="text-align: right;">245</p> <p>1 spoke of? We've got TEAM, we've got DPS, maybe CHL. Is</p> <p>2 there any other database maintained by any other state</p> <p>3 agency that we haven't spoken about?</p> <p>4 A. I'm sure there are lots of databases from lots</p> <p>5 of state agencies. I don't know what --</p> <p>6 Q. For registered voters.</p> <p>7 A. Okay. We have -- we have maintained within our</p> <p>8 system a list of all of the deceased persons from the</p> <p>9 Bureau of Vital Statistics, so it's not directly</p> <p>10 registered voters, but it is the complete list, and so</p> <p>11 when somebody registers to vote their application is</p> <p>12 checked against deceased persons. So we have that</p> <p>13 database that people are checked against.</p> <p>14 Q. And what was the database that these on-line</p> <p>15 counties can access that you spoke of earlier? You said</p> <p>16 almost all but 20 or 30 of the counties were on-line.</p> <p>17 What did you mean by that?</p> <p>18 A. That means that they interface with TEAM in</p> <p>19 realtime, so if they add a voter to TEAM it's added right</p> <p>20 then. If an off-line county were to add a voter as a</p> <p>21 registered voter it will be batch processed overnight,</p> <p>22 and so that voter will show up in TEAM the next day.</p> <p>23 Q. Is there any other database that's available to</p> <p>24 the counties from any source, whether it be DPS or</p> <p>25 Secretary of State or a third-party vendor, that counties</p>	<p style="text-align: right;">247</p> <p>1 A. Well, previously under -- under TVRS -- before</p> <p>2 TEAM, the Texas Voter Registration System, TVRS, was the</p> <p>3 electronic version that wasn't HAVA compliant, but it</p> <p>4 existed before HAVA -- counties were charged a</p> <p>5 participation fee.</p> <p>6 Q. You mentioned VOTEC earlier. What is that</p> <p>7 entity, VOTEC?</p> <p>8 A. I don't know what all they do. One of the</p> <p>9 things that I do know they do is they provide voter</p> <p>10 registration services to some off-line counties in Texas.</p> <p>11 Q. What exactly services, if you know, do they</p> <p>12 offer?</p> <p>13 A. I don't -- I don't know what's on their menu of</p> <p>14 options, but they do voter registration and election</p> <p>15 management for those -- for those counties, and I don't</p> <p>16 know if there's a sliding scale of different options that</p> <p>17 they could elect to have or not. I just -- I don't know.</p> <p>18 Q. Do you know how -- do they interface at all</p> <p>19 with the Secretary of State's Office?</p> <p>20 A. Sure, every night.</p> <p>21 Q. So they have access to TEAM as well?</p> <p>22 A. They do. And every off-line county vendor or</p> <p>23 every vendor that wants to provide voter registration</p> <p>24 services to counties off of TEAM has to be certified by</p> <p>25 the Secretary of State, and our certification process is</p>
<p style="text-align: right;">246</p> <p>1 could utilize in updating their voter registration rolls</p> <p>2 or anything of that sort?</p> <p>3 A. I don't know. You know, I don't know what they</p> <p>4 could use. I've heard that some use public data for list</p> <p>5 maintenance purposes, especially with regard to</p> <p>6 investigating weak matches that we send the counties.</p> <p>7 There's a possibility that counties could subscribe to</p> <p>8 national change of address. I don't know if any of them</p> <p>9 do. So I don't know if there's something out there that</p> <p>10 they could use.</p> <p>11 Q. Is there any database maintained by the</p> <p>12 Secretary of State's Office or DPS that charges the</p> <p>13 individual counties for usage? Is there a charge to the</p> <p>14 counties to access TEAM or any of the databases the</p> <p>15 Secretary of State's Office may have?</p> <p>16 A. TEAM itself, since 2007, since it's been in</p> <p>17 place, has not charged the counties either off-line or</p> <p>18 on-line. We do have statutory authority under Chapter 18</p> <p>19 of the Election Code to make contracts with the counties</p> <p>20 for their participation in electronic voter registration</p> <p>21 database. We haven't used that authority since TEAM has</p> <p>22 been in place because it's been well funded by the</p> <p>23 federal government under HAVA, so there may come a time</p> <p>24 in the future whenever we'll have to change that policy.</p> <p>25 Q. But as of today, no?</p>	<p style="text-align: right;">248</p> <p>1 to ensure that we get accurate data from them whenever</p> <p>2 they submit data to us, so we put them through some</p> <p>3 tests.</p> <p>4 Q. So the county would provide that information to</p> <p>5 a company like VOTEC and then they would provide that to</p> <p>6 the Secretary of State's Office?</p> <p>7 A. Well, I don't know if they --</p> <p>8 Q. What information were you referring to? Let me</p> <p>9 ask that question.</p> <p>10 A. Well, anything that happens with regard to a</p> <p>11 person who registers to vote. So from the application</p> <p>12 getting entered into the system as an application, that</p> <p>13 will then come to TEAM. TEAM overnight will do a live</p> <p>14 check process to make sure that this voter has correctly</p> <p>15 identified themselves, and then that information will be</p> <p>16 passed back to the county the next night, so then if</p> <p>17 anything ever happens with regard to that voter, if they</p> <p>18 move or change their name or if their voter registration</p> <p>19 certificate bounces from their address, they'll be put in</p> <p>20 suspense. So any activity with regard to that voter</p> <p>21 happens at the local level on the voter registration</p> <p>22 system of the off-line vendor. That's the direct</p> <p>23 interface that the VR office will have in that county,</p> <p>24 and that information will then be transmitted to TEAM in</p> <p>25 a batch process overnight.</p>

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<p style="text-align: right;">249</p> <p>1 Now, if we get a deceased voter or a felon 2 or some sort of notification with regard to one of the 3 off-line county voters, then that will be sent to the 4 county overnight as a task for them to work, so they'll 5 have to work their task list and make sure their task 6 list is kept current. If a county -- an off-line county 7 doesn't interface with TEAM regularly, if they skip 8 several nights, then we -- we will chop off, cut off 9 access to their Chapter 19 voter registration money until 10 they submit a batch process. So we have a mechanism for 11 making sure that the counties stay regular in their 12 interface with TEAM. 13 Q. Would it be only the off-line counties that 14 would utilize an outside vendor or can they use both TEAM 15 and an outside vendor? 16 A. I can't think of a situation -- I mean, there 17 are all kinds of vendors in the election world. So they 18 could have a poll book vendor and be on TEAM. They could 19 have some sort of -- I don't know -- list maintenance, 20 letter generating. They could have all kinds of vendors 21 that would use TEAM's information, so I don't know 22 exactly how to answer that question. 23 Q. Let me go to a different area now. Has there 24 ever been an instance where the Secretary of State would 25 send to the individual voters -- you talked about this</p>	<p style="text-align: right;">251</p> <p>1 A. Sure. 2 Q. How would the individual counties know the 3 Secretary of State's Office had this list of 700,000 or 4 800,000 registered voters who may or may not have correct 5 ID? 6 A. I don't know how anybody knows anything. 7 That's -- that's a hard question to answer. 8 Q. Well, I see e-mail blasts that may go out to 9 the county -- county election officials from your office, 10 from the Secretary of State's Office. Was that ever done 11 to say, okay, we have this match, we have eight or -- 12 700,000 or 800,000 registered voters who may not have the 13 correct ID, if you would like those in your county 14 request it? 15 A. I don't think we ever sent a mass e-mail on 16 that. We -- we do talk about it regularly with counties 17 and they talk amongst themselves. The Texas Association 18 of Counties has a list serve, and so a lot of the things 19 that one county's doing with regard to a process they 20 share with each other on their list serve. And so I 21 don't know if we've ever sent an e-mail out on that 22 particular point, but we have talked about it at our 23 seminars and I'm sure they've talked about it amongst 24 themselves. And there are some counties who've received 25 the DPS database themselves and done the matching</p>
<p style="text-align: right;">250</p> <p>1 700,000 or 800,000 people that may or may not have a 2 photo ID. Ever an occasion where the Secretary of 3 State's Office itself would send out a letter to those 4 potential voters or is that left up to the individual 5 counties? 6 A. Well, as I mentioned to Ms. Westfall, every 7 single registered voter in the state gets a card every 8 two years, and for the last two cycles of that process on 9 the card has been a list of identification requirements 10 necessary to vote. 11 Q. I'm talking about just those that you have 12 found through your matching, the Secretary of State's 13 Office found through their matching that may not have the 14 correct ID. Did they get a separate letter? 15 A. They did not get a separate letter from the 16 Secretary of State's Office. I don't know if they 17 received one from their county or not. 18 Q. Was that list sent to the individual counties 19 so they could make that determination? 20 A. The counties that asked for it, yes. 21 Q. And would those -- would it be automatically 22 available to those that are on-line? 23 A. No. 24 Q. That would be a separate list or a separate 25 request would have to be made by the counties?</p>	<p style="text-align: right;">252</p> <p>1 themselves. So it's up to the county how they want to do 2 that. 3 Q. So a county could take their registered voter 4 database and match it with DPS -- 5 A. Sure. 6 Q. -- if they wanted to? 7 A. They can. 8 Q. The seminars that you have spoken of during 9 your deposition, are those where county officials can log 10 on on-line? How is that conducted? How would somebody 11 in Harris County or Galveston County know that you're 12 going to conduct a seminar, for example? 13 A. Well, it's an annual event and it's a live 14 event that we have here in Austin, and so the seminars -- 15 the official election law seminars, we will have one 16 every year for county election officials, we will have 17 one every year for city, school, and other political 18 subdivisions, and we'll have one every other year for 19 political county chairs, county party chairs. So those 20 are -- those are set, and it is a -- it is a much 21 anticipated event when we post the dates of those 22 seminars. 23 Q. And that's a live seminar? 24 A. That's a live seminar. 25 Q. Do you ever do a Skype type seminar for county</p>



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<p style="text-align: right;">253</p> <p>1 election officials?</p> <p>2 A. We do. We've had -- we've had -- our voter</p> <p>3 registration section has done webinars monthly. They</p> <p>4 have drafted what they call mini manuals with regard to</p> <p>5 the topic that's going to be presented at next month's</p> <p>6 webinar, post that mini manual to the TEAM communication</p> <p>7 web page so that counties who want to participate in the</p> <p>8 webinar that month can read the materials ahead of time</p> <p>9 and be prepared for the webinar, and we've had those</p> <p>10 monthly for, I want to say -- if it's not all of 2013,</p> <p>11 it's almost all of 2013. And we have them every month,</p> <p>12 so there's a topic every month, and it's not just voter</p> <p>13 registration. Now we've started branching out into some</p> <p>14 election related webinars, specifically the legal team</p> <p>15 was involved in one for volunteer deputy registrars. So</p> <p>16 yeah, webinars are a tool in our arsenal.</p> <p>17 The other thing that we do is regional</p> <p>18 county election officials have meetings -- some of them</p> <p>19 do it monthly, some of them do it bimonthly, some of them</p> <p>20 do it quarterly -- and they will invite us to come speak</p> <p>21 on a topic and we will do that. The other thing is the</p> <p>22 election administrators in Texas have their own</p> <p>23 association, and they get together once a year, usually</p> <p>24 in January, and they invite us to speak at their meeting</p> <p>25 as well.</p>	<p style="text-align: right;">255</p> <p>1 anything specifically -- rather than receive complaints,</p> <p>2 did you do anything affirmatively to determine how things</p> <p>3 could be done better or how they could be more efficient</p> <p>4 by doing focus groups or just randomly calling election</p> <p>5 officials, anything of that sort?</p> <p>6 A. So you're talking about voters, surveying</p> <p>7 voters?</p> <p>8 Q. No, I'm talking about the election officials,</p> <p>9 surveying how things went in the November 2013 election,</p> <p>10 how we could improve what we're doing, what problems you</p> <p>11 had. Was there any survey or follow-up or focus group</p> <p>12 done by the Secretary of State's Office?</p> <p>13 A. I wouldn't say that there was a survey or a</p> <p>14 focus group. We do talk. We talk all the time, and</p> <p>15 obviously that's a question on our minds, how did it go,</p> <p>16 what needs to be improved, what was -- what was -- what</p> <p>17 needs some tweaking. So that -- that conversation occurs</p> <p>18 all the time. It -- it occurs in person. You know, we</p> <p>19 had a Conference of Urban Counties meeting and I went to</p> <p>20 it, and that was the hot topic, how did -- how did voter</p> <p>21 ID go for the November election. And so all of the folks</p> <p>22 there I talked to one-on-one. So yes, this -- this is --</p> <p>23 there's not any official formal process, but like I was</p> <p>24 explaining, there is a very real and active feedback</p> <p>25 loop.</p>
<p style="text-align: right;">254</p> <p>1 Q. These webinars, are they recorded where someone</p> <p>2 could log on a few days later and watch the webinar</p> <p>3 again?</p> <p>4 A. Not by us.</p> <p>5 Q. This matching that you spoke of earlier today,</p> <p>6 the 700,000 or 800,000 registered voters who may lack</p> <p>7 some form of identification, is that broken down by race</p> <p>8 or geographic location? How specific is that list</p> <p>9 category-wise?</p> <p>10 A. Texas does not keep any racial information or</p> <p>11 ethnicity information with regard to voters, so there's</p> <p>12 no indicator anywhere in our database about anybody's</p> <p>13 race. It is categorized by -- there's -- like I told</p> <p>14 Ms. Westfall, there's actually two separate lists;</p> <p>15 there's one that has the county and the ZIP codes within</p> <p>16 that county and the number of non-matches by ZIP code and</p> <p>17 then there's one that has that information plus the</p> <p>18 voter's name and address.</p> <p>19 Q. Was any survey or focus group or follow-up</p> <p>20 specifically done by the Secretary of State's Office</p> <p>21 after, for example, the November 2013 election? You know</p> <p>22 what I mean by that?</p> <p>23 A. No.</p> <p>24 Q. I mean, just to determine how the election went</p> <p>25 forward, what the problems were. I mean, did you do</p>	<p style="text-align: right;">256</p> <p>1 Q. But just so I'll understand your answer,</p> <p>2 there's no official follow-up or survey that's completed</p> <p>3 by your office?</p> <p>4 A. There's not any formal process for gathering</p> <p>5 information in a systematic way. There is very much a</p> <p>6 very real and very alive feedback loop that is constant.</p> <p>7 Q. Has there been any -- has there been any</p> <p>8 investigation -- and maybe that's not the right word --</p> <p>9 or review by the Secretary of State's Office into things</p> <p>10 like same -- same day voter registration or putting --</p> <p>11 you know, making the DPS office, you know, a place where</p> <p>12 you can register to vote, get your ID, all of that?</p> <p>13 A. The legislature introduces bills, you know,</p> <p>14 every other year, and I believe that on-line voter</p> <p>15 registration has been a bill that's been introduced, and</p> <p>16 as such it's a bill that we would have analyzed and we</p> <p>17 would have done a fiscal note for, so --</p> <p>18 Q. You would have done a what?</p> <p>19 A. Fiscal note, how much will it cost the state if</p> <p>20 we implement same day voter registration. So if that's</p> <p>21 what you mean by analysis of same day voter registration,</p> <p>22 we've done that. With regard to the DPS being an ID and</p> <p>23 voter registration shop, that's what they do now under</p> <p>24 the 1993 National Voter Registration Act.</p> <p>25 Q. The analysis for the same day voter</p>

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<p style="text-align: right;">257</p> <p>1 registration, where would we find that in the document</p> <p>2 production? Would that be on-line or do you know?</p> <p>3 <b>A. Yeah, that would be -- I don't know where stuff</b></p> <p>4 <b>goes related to a legislative session, but that would be</b></p> <p>5 <b>associated with whatever particular bill had same day</b></p> <p>6 <b>voter registration in it, and the legislature would keep</b></p> <p>7 <b>those records in the Legislative Reference Library or --</b></p> <p>8 <b>I don't know where fiscal notes go after a session.</b></p> <p>9 Q. But the fiscal analysis would have come from</p> <p>10 your office in that regard?</p> <p>11 <b>A. Part of it probably.</b></p> <p>12 Q. Has there been any request by your office for</p> <p>13 a fiscal analysis of, say, waiving all the fees for</p> <p>14 indigent voters?</p> <p>15 <b>A. I don't understand that question.</b></p> <p>16 Q. <b>I don't know how to rephrase it. There's been</b></p> <p>17 <b>some talk about waiving all of the fees for individuals</b></p> <p>18 <b>who cannot afford to get, for example, a birth</b></p> <p>19 <b>certificate or a driver license. Has your office ever</b></p> <p>20 <b>been asked to provide an analysis of the cost of doing</b></p> <p>21 <b>that, waiving those fees?</b></p> <p>22 <b>A. No. Whenever the Health and Human Services</b></p> <p>23 <b>issued their rule amendment saying that a birth</b></p> <p>24 <b>certificate for election identification certificate</b></p> <p>25 <b>purposes could be purchased for the statutory minimum fee</b></p>	<p style="text-align: right;">259</p> <p>1 budget, or was it all from HAVA?</p> <p>2 <b>A. Well, we do things all the time to educate</b></p> <p>3 <b>counties that are within our budget. I believe the HAVA</b></p> <p>4 <b>designated money was specifically for a paid media public</b></p> <p>5 <b>relations campaign in addition to what we do within our</b></p> <p>6 <b>budget. So it's both, to answer your question.</b></p> <p>7 Q. But the HAVA money was specifically -- has to</p> <p>8 be specifically used for a specific purpose, as I</p> <p>9 understand that bill. Is that correct?</p> <p>10 <b>A. That's right.</b></p> <p>11 Q. <b>Okay. Has there been any analysis or has</b></p> <p>12 <b>anyone in the Secretary of State's Office analyzed</b></p> <p>13 <b>provisional ballots from, let's say, the general election</b></p> <p>14 <b>in 2008, general election in 2012, the November 2013</b></p> <p>15 <b>election? Has anybody analyzed whether provisional</b></p> <p>16 <b>ballots are going up or going down, anything of that</b></p> <p>17 <b>sort?</b></p> <p>18 <b>A. No, other than the EAC survey that I mentioned</b></p> <p>19 <b>before so you can compare the data across even-numbered</b></p> <p>20 <b>years. The EAC survey pertains to the general election</b></p> <p>21 <b>in those even-numbered years.</b></p> <p>22 Q. Other than the forms we have seen that have</p> <p>23 been produced by your office, has there ever been a form</p> <p>24 that was sent to the election officials as part of a</p> <p>25 potential survey just for Secretary of State's feedback</p>
<p style="text-align: right;">258</p> <p>1 <b>of \$2 or \$3, whatever it is, we did hear from a lot of</b></p> <p>2 <b>county clerks who believed that a source of revenue was</b></p> <p>3 <b>being cut from them, but we did not do any analysis of</b></p> <p>4 <b>how much that was.</b></p> <p>5 Q. So there were some complaints about the loss of</p> <p>6 revenue, but your office did not analyze how much that</p> <p>7 would be?</p> <p>8 <b>A. No, sir.</b></p> <p>9 Q. Is there any other aspect of Senate Bill 14 or</p> <p>10 one of the amendments where your office was asked to</p> <p>11 perform some type of fiscal -- fiscal analysis that you</p> <p>12 can think of?</p> <p>13 <b>A. I can't think of any. There -- you know, I</b></p> <p>14 <b>don't want to -- there was talk in the 2011 82nd</b></p> <p>15 <b>Legislative Session about voter education with regard to</b></p> <p>16 <b>ID requirements and there was a specific -- I don't know</b></p> <p>17 <b>what mechanism the legislature used, but they designated</b></p> <p>18 <b>\$2 million of the Help American Vote Act money for that</b></p> <p>19 <b>purpose, so there was that bit of fiscal piece to SB 14.</b></p> <p>20 Q. Somebody else is going to cover that area with</p> <p>21 you in a few minutes.</p> <p>22 <b>A. Okay.</b></p> <p>23 Q. But as far as the budget from the Secretary of</p> <p>24 State's Office for educational purposes for SB 14, was</p> <p>25 that from your budget, meaning the Secretary of State's</p>	<p style="text-align: right;">260</p> <p>1 purposes, like tell us how we're doing, tell us what the</p> <p>2 problems are, anything of that sort?</p> <p>3 <b>A. Well, currently we're doing our annual survey,</b></p> <p>4 <b>customer satisfaction survey, so that's at the bottom of</b></p> <p>5 <b>all of our outgoing e-mails now.</b></p> <p>6 Q. Okay. And how often does that occur?</p> <p>7 <b>A. It occurs one month every year. And it's for</b></p> <p>8 <b>all Secretary of State customers, not just elections</b></p> <p>9 <b>division.</b></p> <p>10 Q. Have there been any complaints from the</p> <p>11 counties that they do not have enough staff to handle</p> <p>12 some of the aspects of SB 14?</p> <p>13 <b>A. No. No, the -- the -- the concerns that have</b></p> <p>14 <b>been expressed have been with regard to a fear of</b></p> <p>15 <b>increased on -- increase on provisional voters, so we've</b></p> <p>16 <b>heard from some voter registrars who were concerned about</b></p> <p>17 <b>a potential increase in workload, but all of that was</b></p> <p>18 <b>before actual elections had taken place. We haven't</b></p> <p>19 <b>heard anything to that effect since the elections have</b></p> <p>20 <b>actually occurred.</b></p> <p>21 Q. Have any of the counties asked for extra</p> <p>22 funding because of some aspect of SB 14, to your</p> <p>23 knowledge?</p> <p>24 <b>A. I don't know. They would have asked their</b></p> <p>25 <b>county commissioners for funding, so I -- I just don't --</b></p>

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<p style="text-align: right;">261</p> <p>1 <b>I haven't heard about it.</b></p> <p>2 Q. Would it ever come to the attention of the</p> <p>3 Secretary of State's Office through the county</p> <p>4 commissioners court or anybody that they needed extra</p> <p>5 funding or would it go to the legislature or some</p> <p>6 other --</p> <p>7 <b>A. Right. If -- if there was some sort of thing</b></p> <p>8 <b>that counties felt like they needed money for they'd go</b></p> <p>9 <b>to the legislature for it.</b></p> <p>10 Q. They wouldn't come to your office and there's</p> <p>11 no mechanism for them doing that under SB 14?</p> <p>12 <b>A. That's right.</b></p> <p>13 Q. The training of the election officials or the</p> <p>14 election judges or clerks, is that required by the</p> <p>15 Secretary of State's Office?</p> <p>16 <b>A. Well, it depends. All election poll workers</b></p> <p>17 <b>have to undergo training with regard to photo ID</b></p> <p>18 <b>requirements. County election officials are required to</b></p> <p>19 <b>train poll workers for county official election</b></p> <p>20 <b>elections. Primaries there's not a requirement for</b></p> <p>21 <b>general poll worker training and for any local entity</b></p> <p>22 <b>election there's not a requirement for poll worker</b></p> <p>23 <b>training. However, to the extent that the local entities</b></p> <p>24 <b>have an election run by the county, the county will offer</b></p> <p>25 <b>poll worker training, and like I said, all poll workers</b></p>	<p style="text-align: right;">263</p> <p>1 funds were spent, how much was utilized on media, print,</p> <p>2 et cetera?</p> <p>3 <b>A. I'm ready to talk about that today.</b></p> <p>4 Q. Okay. I think that's somebody else's area.</p> <p>5 I don't want to step on anybody's toes and I don't want</p> <p>6 to re-plow --</p> <p>7 <b>A. I mean, and if there's a specific answer that</b></p> <p>8 <b>I can't answer, then probably she would be best, but --</b></p> <p>9 Q. Okay. Did your office do any research before</p> <p>10 the first election under SB 14 that came from other</p> <p>11 states? Did you do any outreach to other states who may</p> <p>12 have had a similar bill and had an election under that</p> <p>13 type of bill to get feedback before you came up with your</p> <p>14 forms, before you did the training, anything of that</p> <p>15 sort?</p> <p>16 <b>A. I am a member of the National Association of</b></p> <p>17 <b>State Election Directors, and yes, I have talked to</b></p> <p>18 <b>secretaries of state as well as election directors in</b></p> <p>19 <b>other states about their implementation of photo ID, what</b></p> <p>20 <b>they found that worked, what they found that didn't work,</b></p> <p>21 <b>you know, issues they ran into and how they overcame</b></p> <p>22 <b>them. Yeah, we've definitely had those kind of</b></p> <p>23 <b>conversations, not anything systematic or official.</b></p> <p>24 Q. Not any exchange of letters or documents,</p> <p>25 anything of that sort, all oral?</p>
<p style="text-align: right;">262</p> <p>1 have to be trained with regard to photo ID requirements,</p> <p>2 for primary, for local elections, for county elections</p> <p>3 that -- that they're running for local entities.</p> <p>4 Q. And how is that monitored by your office or is</p> <p>5 it?</p> <p>6 <b>A. It's not.</b></p> <p>7 Q. So they just -- you just make sure that the</p> <p>8 counties know they're supposed to train the poll workers,</p> <p>9 but there's no way for you to know if they actually do</p> <p>10 that?</p> <p>11 <b>A. That's right. And for -- we have to inform the</b></p> <p>12 <b>political party chairs, and we did that at our seminar in</b></p> <p>13 <b>October of 2013, of their responsibility to train their</b></p> <p>14 <b>poll workers with regard to photo ID requirements. So</b></p> <p>15 <b>that is part of SB 14.</b></p> <p>16 Q. Who in your office, whether it be a division</p> <p>17 head or someone underneath you, was in charge of</p> <p>18 implementing the educational requirements to the public</p> <p>19 or the advertising to the public of the new requirements</p> <p>20 of SB 14?</p> <p>21 <b>A. The paid media piece and the Secretary of</b></p> <p>22 <b>State's election official visits would have been</b></p> <p>23 <b>coordinated with our communications director,</b></p> <p>24 <b>Alicia Pierce.</b></p> <p>25 Q. Would she be the best person to address how the</p>	<p style="text-align: right;">264</p> <p>1 <b>A. I don't know if I've received any documents.</b></p> <p>2 <b>I'm pretty sure that Tennessee sent me some examples of</b></p> <p>3 <b>their public communications. I don't know if it was</b></p> <p>4 <b>links back to their website or what, but definitely I got</b></p> <p>5 <b>some information from Tennessee.</b></p> <p>6 Q. Any other states that you can recall?</p> <p>7 <b>A. I've talked to Marcy over in South Carolina.</b></p> <p>8 <b>She's the state election director. I've talked to the</b></p> <p>9 <b>election officials in Alabama. They don't usually come</b></p> <p>10 <b>to our meetings, but I've -- I've talked to them and then</b></p> <p>11 <b>I've talked to Mark Goins and Tre Hargett in Tennessee.</b></p> <p>12 <b>I also talked to Trent -- I can't think of his last name.</b></p> <p>13 <b>He's the democratic elections director for Indiana -- and</b></p> <p>14 <b>Brad King, the Republican in -- in Indiana. I've talked</b></p> <p>15 <b>to both of them. Trent Deckard.</b></p> <p>16 Q. Did any of those other states or individuals</p> <p>17 provide you with any information that you utilized or</p> <p>18 relied upon?</p> <p>19 <b>A. I can't think of anything in writing. I did</b></p> <p>20 <b>get a letter that Indiana received from the Election</b></p> <p>21 <b>Assistance Commission about using HAVA money for</b></p> <p>22 <b>education purposes.</b></p> <p>23 Q. And who in your office is responsible for</p> <p>24 requesting HAVA money?</p> <p>25 <b>A. The HAVA money was -- was sent pretty much as</b></p>

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<p style="text-align: right;">265</p> <p>1 a one-time payment, so we've had the HAVA money in the</p> <p>2 comptroller's accounts since whenever it arrived.</p> <p>3 Q. Was it there after you took your position or</p> <p>4 was it there before?</p> <p>5 A. It was given to us by the federal government</p> <p>6 before I arrived.</p> <p>7 Q. That amount of 3 -- 2 million? 3 million?</p> <p>8 I don't remember.</p> <p>9 A. No, the total amount of 203.7 million.</p> <p>10 Q. But designated for the educational or the</p> <p>11 advertising portion was how much?</p> <p>12 A. I don't know. We've got -- we've got a state</p> <p>13 plan for usage of the HAVA money that we had to submit to</p> <p>14 the Election Assistance Commission before they would</p> <p>15 release the money, and so there -- there is an Election</p> <p>16 Improvement Fund that would have contained education as</p> <p>17 one of the strategies within that fund, and I don't know</p> <p>18 how much was originally put into that strategy, but there</p> <p>19 are variances within each element of the state plan, so</p> <p>20 it can be a range of dollars that can be spent, and we</p> <p>21 are well within our state plan range.</p> <p>22 MR. BRAZIL: Thank you. I'll pass the</p> <p>23 witness.</p> <p>24 MR. BARON: I've got a few quick</p> <p>25 follow-ups.</p>	<p style="text-align: right;">267</p> <p>1 will help counties contact potentially impacted voters,</p> <p>2 right?</p> <p>3 A. That's right.</p> <p>4 Q. What are you talking about there? Is that</p> <p>5 substantially similar or is that the general</p> <p>6 informational program that you talked about?</p> <p>7 A. It's -- it's -- it's all of that, yes, and it's</p> <p>8 people who need IDs, where they can get IDs. So part of</p> <p>9 our help to the counties is to have our statewide</p> <p>10 education program and our election visits from the</p> <p>11 Secretary of State so that we can get earned media as</p> <p>12 well as paid media, and so we -- we made a commitment to</p> <p>13 the counties to consistently direct voters to</p> <p>14 VoteTexas.Gov and Am I Registered because voters need to</p> <p>15 look themselves up to make sure their names will match</p> <p>16 and change it if they want to. So that's -- that's our</p> <p>17 commitment here. And we also -- when we say contact us</p> <p>18 if you need more information, that's where we would have</p> <p>19 talked about, you know, if you need information with</p> <p>20 regard to voters in your county who don't match with an</p> <p>21 ID, then we've got -- we've got a list from last summer.</p> <p>22 Q. But in terms of funding, that doesn't refer to</p> <p>23 any assistance with funding?</p> <p>24 A. No, it doesn't refer to any assistance with</p> <p>25 funding.</p>
<p style="text-align: right;">266</p> <p>1 FURTHER EXAMINATION</p> <p>2 BY MR. BARON:</p> <p>3 Q. When I was talking to you earlier we talked</p> <p>4 about the training materials and the PowerPoints, so I</p> <p>5 went on-line finally and tracked them down. I see two</p> <p>6 here, and one is the Intro to Photo ID that's dated</p> <p>7 February 6th of 2014.</p> <p>8 A. Okay.</p> <p>9 Q. Are you familiar -- I mean, I'll show it to</p> <p>10 you. I mean, they're a little hard to print out, but you</p> <p>11 can scroll up to the top of it. That one's dated</p> <p>12 February 6th of 2014.</p> <p>13 A. Okay.</p> <p>14 Q. And so there's just two slides there I wanted</p> <p>15 to ask you about. Slide 6 --</p> <p>16 A. I don't know what speech this was in regard to.</p> <p>17 Q. That's fine. They're on your website. I'm not</p> <p>18 trying to play gotcha here. I'm just going to ask you</p> <p>19 a few questions.</p> <p>20 MR. BARON: Hey, if they turn out to be</p> <p>21 gotcha answers I'll be surprised. But, you know, this</p> <p>22 guy's a pretty good witness, so he'll have an</p> <p>23 explanation, I'm sure.</p> <p>24 A. Right. Slide 6. I've got it.</p> <p>25 Q. Okay. So that one says: Secretary of State</p>	<p style="text-align: right;">268</p> <p>1 Q. Counties are on their own in terms of costs?</p> <p>2 A. Right. Now, it -- it -- if -- they have</p> <p>3 available to them state money under Chapter 19 to assist</p> <p>4 with voter registration, and so conceivably they could</p> <p>5 have some sort of voter registration campaign with regard</p> <p>6 to checking your names and stuff and they could ask for</p> <p>7 a Chapter 19 reimbursement, and we would, of course,</p> <p>8 evaluate those claims.</p> <p>9 Q. Go to Slide 17, Totality of Circumstances.</p> <p>10 A. Uh-huh.</p> <p>11 Q. And you see that, right?</p> <p>12 A. Sure.</p> <p>13 Q. And we talked about totality of circumstances.</p> <p>14 And all it says there is to remember to compare all info.</p> <p>15 A. Right.</p> <p>16 Q. Doesn't include -- and you can look through the</p> <p>17 whole thing. I mean, I have. It doesn't include that</p> <p>18 discussion about only using the information to the</p> <p>19 benefit and not to the detriment of the voter; is that</p> <p>20 correct?</p> <p>21 A. Right. The slide doesn't, but the speech</p> <p>22 behind the slide sure does --</p> <p>23 Q. Fair enough.</p> <p>24 A. -- every time it's given.</p> <p>25 Q. Okay.</p>

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<p style="text-align: right;">269</p> <p>1 <b>A. And I've given the speech a lot of times.</b></p> <p>2 Q. I'm not arguing with you, I'm just going with</p> <p>3 what's --</p> <p>4 <b>A. You want to hear it?</b></p> <p>5 Q. I'm sure before this case is over we'll</p> <p>6 probably get to, but --</p> <p>7 <b>A. Absolutely.</b></p> <p>8 Q. And I'm going to go to one more -- one more</p> <p>9 presentation real quick.</p> <p>10 MR. KEISTER: Counsel, is there some way</p> <p>11 to identify that for the record?</p> <p>12 MR. BARON: Yes, this is the -- the</p> <p>13 PowerPoint, and it's titled Intro to Photo ID, and it's</p> <p>14 dated February 6, 2014, and it is contained on the Texas</p> <p>15 Secretary of State website under the annual seminar</p> <p>16 presentation files.</p> <p>17 MR. KEISTER: Okay. Thank you.</p> <p>18 MR. BARON: And they're hard to print out.</p> <p>19 You have to do some fancy thing about saving them and all</p> <p>20 that.</p> <p>21 <b>A. And that's why I think that February 6th date</b></p> <p>22 <b>is not correct.</b></p> <p>23 Q. And I'm not arguing with you, but -- okay. The</p> <p>24 other one I want to talk to you about very briefly is the</p> <p>25 one that's titled How to Handle Substantially Similar</p>	<p style="text-align: right;">271</p> <p>1 opinion?</p> <p>2 <b>A. At the polling place?</b></p> <p>3 Q. Yes, sir.</p> <p>4 <b>A. No.</b></p> <p>5 Q. Okay. What about -- so they can't do that to</p> <p>6 show that the name should be considered substantially</p> <p>7 similar?</p> <p>8 <b>A. No.</b></p> <p>9 Q. Okay. And --</p> <p>10 <b>A. Not at the polling place.</b></p> <p>11 Q. Not at the polling --</p> <p>12 <b>A. That's a matter for the voter registrar during</b></p> <p>13 <b>the cure period.</b></p> <p>14 Q. Only during the cure period?</p> <p>15 <b>A. That's right.</b></p> <p>16 Q. So during the cure period your position is,</p> <p>17 I could show up with whatever, my utility bill, some --</p> <p>18 some additional documentation?</p> <p>19 <b>A. No. You could show up with a marriage license,</b></p> <p>20 <b>court order, letter from a physician, or you can make an</b></p> <p>21 <b>affidavit.</b></p> <p>22 Q. Okay. Those four things that are listed in the</p> <p>23 statute and those things only. Okay. Has the Secretary</p> <p>24 of State, to your knowledge, done any searches for</p> <p>25 information on any of the individual plaintiffs in this</p>
<p style="text-align: right;">270</p> <p>1 Names, and that's actually dated August 12th of 2013.</p> <p>2 And I also want to go to the -- you can look at the whole</p> <p>3 thing if you want. I mean, I think this is where you</p> <p>4 have the totality of circumstances with the Lady Bird</p> <p>5 Johnson example on Slide 10, and then on Slide 11 again</p> <p>6 it says to use the info to assist in the determination</p> <p>7 without making it clear that the totality of</p> <p>8 circumstances analysis is only supposed to be used to the</p> <p>9 benefit of the voter, not to the detriment of the voter,</p> <p>10 correct?</p> <p>11 <b>A. Sure. It doesn't say it on the slide, but we</b></p> <p>12 <b>definitely say it in the speech.</b></p> <p>13 Q. A few quick questions. Were -- one more</p> <p>14 question on the counties. Were counties given lists of</p> <p>15 no-match voters for free or did they have to pay for</p> <p>16 that?</p> <p>17 <b>A. No, no, if they wanted it we'd give it to them.</b></p> <p>18 Q. But only if they requested it?</p> <p>19 <b>A. Sure.</b></p> <p>20 Q. Okay. Talking about curing -- I think you were</p> <p>21 testifying about that a little bit earlier.</p> <p>22 <b>A. Uh-huh.</b></p> <p>23 Q. Can voters, in the totality of circumstances</p> <p>24 analysis, show other non-SB 14 identification to assist</p> <p>25 in the totality of circumstances analysis, in your</p>	<p style="text-align: right;">272</p> <p>1 case?</p> <p>2 <b>A. I don't know.</b></p> <p>3 Q. Okay.</p> <p>4 <b>A. I mean -- I don't know.</b></p> <p>5 Q. Has the Secretary of State requested any</p> <p>6 information searches from any other state agencies on any</p> <p>7 of the individual plaintiffs in this case?</p> <p>8 <b>A. We have not.</b></p> <p>9 Q. On the mobile units -- this is my last</p> <p>10 question. You talked about no fingerprinting equipment</p> <p>11 on those mobile units, right?</p> <p>12 <b>A. That's right.</b></p> <p>13 Q. Is there anything else that's not on those</p> <p>14 mobile units that the DPS uses when they issue EICs at</p> <p>15 DPS locations that you can think of?</p> <p>16 <b>A. I don't want you to be under the impression</b></p> <p>17 <b>that they collect IDs for EICs at DPS locations.</b></p> <p>18 Q. Well, if I'm --</p> <p>19 <b>A. So if you're under that impression I'm not</b></p> <p>20 <b>going to -- I'm not going to agree with that assumption</b></p> <p>21 <b>in light of that question.</b></p> <p>22 Q. I'm -- I'm confused then. What I'm saying is,</p> <p>23 is there any equipment --</p> <p>24 MR. BARON: Strike it. I'll rephrase it</p> <p>25 and maybe fix the problem.</p>



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<p style="text-align: right;">273</p> <p>1 Q. Is there any other equipment not on the mobile</p> <p>2 units that DPS uses in the EIC process at the DPS</p> <p>3 offices?</p> <p>4 <b>A. Not that I'm aware of.</b></p> <p>5 MR. BARON: Okay. Thank you.</p> <p>6 MR. ROSENBERG: Want to take a break?</p> <p>7 MR. KEISTER: I'm ready to.</p> <p>8 (Recess from 3:49 p.m. to 4:03 p.m.)</p> <p>9 EXAMINATION</p> <p>10 BY MR. AGRAHARKAR:</p> <p>11 Q. Good afternoon, Mr. Ingram. My name is</p> <p>12 Vishal Agraharkar and I represent Texas NAACP and MALC,</p> <p>13 and I'll be asking you a few more questions today.</p> <p>14 <b>A. Okay.</b></p> <p>15 Q. At any time between January 1, 2011, to the</p> <p>16 present has the Secretary of State analyzed or estimated</p> <p>17 the total number of registered voters who are either</p> <p>18 Anglo, African-American, Latino, or other?</p> <p>19 <b>A. What was the date range?</b></p> <p>20 Q. January 1, 2011 to the present.</p> <p>21 <b>A. There was a matching exercise that the</b></p> <p>22 <b>Department of Justice made us undergo, and I sent the</b></p> <p>23 <b>letter to them with the results of that exercise, I</b></p> <p>24 <b>believe January 12th or so of 2012, and every month we do</b></p> <p>25 <b>a report of the number of Hispanic surname voters by</b></p>	<p style="text-align: right;">275</p> <p>1 <b>know that.</b></p> <p>2 Q. But if a voter came to the polls and said, my</p> <p>3 driver license is suspended, there is currently -- is</p> <p>4 your testimony that there is no rule or guidance as to</p> <p>5 whether or not that is acceptable ID for voting?</p> <p>6 <b>A. That would be an acceptable form of ID.</b></p> <p>7 Q. That is an acceptable form of ID?</p> <p>8 <b>A. If it's not expired more than 60 days.</b></p> <p>9 Q. And has that been clearly communicated to</p> <p>10 election officials in trainings or to voters in any other</p> <p>11 way?</p> <p>12 <b>A. We have not discussed suspended driver's</b></p> <p>13 <b>licenses at all because a suspended driver license is not</b></p> <p>14 <b>something that a poll worker would have knowledge of</b></p> <p>15 Q. Okay. So it is possible, then, that voters,</p> <p>16 poll workers, and other election officials may believe</p> <p>17 that a suspended license is not a valid ID for voting?</p> <p>18 MR. KEISTER: Objection, calls for</p> <p>19 speculation.</p> <p>20 <b>A. I don't know if they would believe that or not.</b></p> <p>21 <b>It's not a category that has come up or would come up.</b></p> <p>22 Q. Have you in your public education or other</p> <p>23 advertisements used the phrase current ID to describe the</p> <p>24 types of driver's licenses that are acceptable for</p> <p>25 voting?</p>
<p style="text-align: right;">274</p> <p>1 <b>household and by county.</b></p> <p>2 Q. Okay. And the first matching exercise that you</p> <p>3 mentioned, was that just with respect to Hispanic</p> <p>4 surnames or what was the -- what was the match?</p> <p>5 <b>A. The request by the Department of Justice in the</b></p> <p>6 <b>administrative preclearance process was to match with the</b></p> <p>7 <b>DPS data that contained race and ethnicity because the</b></p> <p>8 <b>previous matching that we had done was with our in-house</b></p> <p>9 <b>database and it did not contain any race or ethnicity</b></p> <p>10 <b>information. And so we did a separate matching process</b></p> <p>11 <b>with a more complete, in that regard, database from the</b></p> <p>12 <b>Department of Public Safety, and it carried with it its</b></p> <p>13 <b>own set of problems that I outlined in my letter to the</b></p> <p>14 <b>Department of Justice with those results.</b></p> <p>15 Q. Okay. And has the Secretary of State during</p> <p>16 that time done anything else to attempt to determine the</p> <p>17 racial demographics of registered voters?</p> <p>18 <b>A. No, sir.</b></p> <p>19 Q. Okay. Is a suspended driver license acceptable</p> <p>20 for voting?</p> <p>21 <b>A. I don't know. I don't know how a poll worker</b></p> <p>22 <b>would know that a driver license is suspended. So if you</b></p> <p>23 <b>show up with a driver license and it's not expired you</b></p> <p>24 <b>can use it to vote. If it's suspended by the Department</b></p> <p>25 <b>of Public Safety, there's no way for a poll worker to</b></p>	<p style="text-align: right;">276</p> <p>1 <b>A. I don't know if we've said current ID. What we</b></p> <p>2 <b>say is an ID that is not expired or is not expired more</b></p> <p>3 <b>than 60 days before the date it's presented.</b></p> <p>4 Q. Okay. And assuming that you use the phrase</p> <p>5 current at times, is -- do you see room for confusion as</p> <p>6 to whether a suspended driver license would meet that</p> <p>7 definition?</p> <p>8 <b>A. I don't know if a suspended driver license</b></p> <p>9 <b>would be current or not. That's -- that's not the</b></p> <p>10 <b>phraseology the statute uses and that's not the</b></p> <p>11 <b>phraseology that we use in our training.</b></p> <p>12 (Exhibit Nos. 28 through 30 marked)</p> <p>13 Q. Okay. I'd like to show you these marked</p> <p>14 documents, Exhibit 28, Exhibit 29, and Exhibit 30.</p> <p>15 MR. AGRAHARKAR: I'm afraid I don't have</p> <p>16 many copies of them.</p> <p>17 MR. ROSENBERG: Why don't you just</p> <p>18 identify them for the record.</p> <p>19 MR. AGRAHARKAR: Exhibit 28 is titled,</p> <p>20 Fall 2013 Campaign \$400,000 (all non-HAVA money); Exhibit</p> <p>21 29 is titled, 2014 Voter Education Campaign Phase I -</p> <p>22 about \$400,000 (HAVA); and Exhibit 30 is titled, 2014</p> <p>23 Voter Education Campaign Phase II - about \$1.6 million</p> <p>24 (HAVA).</p> <p>25 Q. Mr. Ingram, do you know what these documents</p>

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<p style="text-align: right;">277</p> <p>1 are?</p> <p>2 A. Yes.</p> <p>3 Q. What are they?</p> <p>4 A. They are summary sheets that the director of</p> <p>5 communications prepared for me to prepare for this</p> <p>6 deposition.</p> <p>7 Q. Okay. So when were they produced? I'm sorry.</p> <p>8 When were they produced to us?</p> <p>9 A. Today.</p> <p>10 Q. Today. And are there other documents with</p> <p>11 respect to the Voter Education Campaign that have not yet</p> <p>12 been produced to the plaintiffs?</p> <p>13 MR. KEISTER: Objection, vague.</p> <p>14 Q. Are there -- well, you may answer if you -- if</p> <p>15 you understand the question.</p> <p>16 A. I don't know -- I don't know what's been</p> <p>17 produced and what hasn't been produced.</p> <p>18 Q. Have you --</p> <p>19 A. These didn't exist until late last week, and so</p> <p>20 they couldn't have been produced.</p> <p>21 Q. Okay. And who made this?</p> <p>22 A. Alicia Pierce, our communications director for</p> <p>23 the Secretary of State's Office.</p> <p>24 Q. Okay. And is that true for Exhibit 28,</p> <p>25 Exhibit 29, and Exhibit 30?</p>	<p style="text-align: right;">279</p> <p>1 of special extra money paid media campaign or effort, and</p> <p>2 those are very real and they're very much a part of the</p> <p>3 education of the public with regard to photo ID, and</p> <p>4 this -- these summary sheets talk about the other piece</p> <p>5 of it, which is the special event paid media, earned</p> <p>6 media campaign with regard to voter education.</p> <p>7 Q. Okay. And I'm just trying to get some clarity</p> <p>8 with respect to the components of the education campaign</p> <p>9 that are not listed on here for 2013.</p> <p>10 A. Sure.</p> <p>11 Q. You said that there was some education with</p> <p>12 counties and then there is a website. Is -- what did you</p> <p>13 mean by the education with the county officials?</p> <p>14 A. Well, the county election officials are very,</p> <p>15 very important in our relations with the public. You</p> <p>16 know, we have to have the county election officials -- we</p> <p>17 have to teach them what's new and how it's going to be</p> <p>18 different and what's going to be required on the part of</p> <p>19 their voters, and then they turn around and educate their</p> <p>20 local communities. These local election administrator</p> <p>21 folks, county clerks, tax assessor-collectors, and EAs</p> <p>22 usually have very good working relations with their local</p> <p>23 media. Their local media usually is very happy to do a</p> <p>24 story, you know, about what it -- a public information</p> <p>25 kind of story about voting and what's different and</p>
<p style="text-align: right;">278</p> <p>1 A. Yes, sir.</p> <p>2 Q. And just looking at Exhibit 28, does this</p> <p>3 include all of the components of a -- of a voter</p> <p>4 education plan for 2013?</p> <p>5 A. Not exactly. This would -- this has the -- the</p> <p>6 paid media visit extra effort kind of stuff. There are</p> <p>7 other things that we do in our office for the counties as</p> <p>8 well as for the national voter registration agencies</p> <p>9 under Chapter 20 of the Election Code that are not</p> <p>10 included on this that would have been public outreach.</p> <p>11 So this is the media component of the public outreach</p> <p>12 that our director of communications would have directly</p> <p>13 oversaw. There is also an ongoing sort of voter</p> <p>14 education effort within the election division that we</p> <p>15 participate in with the counties and the national voter</p> <p>16 registration agencies.</p> <p>17 Q. Okay. So this is just the media component, but</p> <p>18 there's a separate education component; is that -- is</p> <p>19 that right?</p> <p>20 A. Right. There's -- the education of the public</p> <p>21 has, I would say, sort of two main ways that we do it.</p> <p>22 We do it on an ongoing basis through the counties and</p> <p>23 through our partners in voter registration as well as</p> <p>24 with the public and our -- our VoteTexas.Gov website.</p> <p>25 And so there's those kind of ongoing things that are not</p>	<p style="text-align: right;">280</p> <p>1 what's coming up, so this is -- this is a good</p> <p>2 opportunity for them to provide that information. So our</p> <p>3 first line of defense is for our elections division to</p> <p>4 interface with the county election officials so that they</p> <p>5 are prepared. We -- we -- we do -- I don't know what you</p> <p>6 call it. Collateral, I think, is the official media</p> <p>7 relations term for handouts, posters, stuff like that for</p> <p>8 the counties to use, and we give that to them from our</p> <p>9 graphics department.</p> <p>10 Q. Okay. And that is separate from what is listed</p> <p>11 on here, which -- under the headings Paid Media, Earned</p> <p>12 Media, and Web Social Media?</p> <p>13 A. That's correct.</p> <p>14 Q. Okay. And then you mentioned the website,</p> <p>15 which you said is also separate from this. Are there any</p> <p>16 other components of your voter education campaign?</p> <p>17 A. Sure. We -- we also have partner agencies</p> <p>18 under Chapter 20 in the National Voter Registration Act</p> <p>19 that assist with voter registration, and they have -- in</p> <p>20 their offices where benefit recipients go to interface</p> <p>21 with them about benefits they have posters from the</p> <p>22 Secretary of State's Office, so we make sure that the</p> <p>23 information on those posters is current, and we actually</p> <p>24 produce the posters in English and Spanish for those NVRA</p> <p>25 agency offices.</p>

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<p style="text-align: right;">281</p> <p>1 Q. Okay. And are those posters the same posters 2 that -- and bear with me. I haven't had much time to 3 review this. But are there -- I believe there are 4 posters mentioned on here or print items. Are those the 5 same posters that are mentioned on here or are those just 6 specific to the partner agencies?</p> <p>7 A. Those are -- those are separate from anything 8 on here. Anything on here is something the secretary 9 would use in her personal visits to counties. What I'm 10 talking about are posters that we produce in-house -- we 11 do the graphics for them as well as the printing -- and 12 distribute to counties and to benefit agencies.</p> <p>13 Q. Okay. And other than the routine 14 communications with the counties that you mentioned, the 15 website, and these partner agency collaborations, are 16 there any other components that you'd say to the 17 education campaign?</p> <p>18 A. Well, you know, as I mentioned before, the mass 19 mail-out of voter registration certificates occurs at the 20 end of every odd-numbered year, and we communicate 21 information on those as well specifically with regard to 22 photo ID. The mass mail-out in 2011 didn't actually 23 occur until April of 2012 because of redistricting, and 24 so that delayed card, anyway, when it was mailed it had 25 on the back of it a conditional, if cleared by the</p>	<p style="text-align: right;">283</p> <p>1 A. Yes, in collaboration with our communications 2 department, but we -- I don't know how you -- we hire a 3 vendor with certain expertise so that they -- and we rely 4 on that expertise.</p> <p>5 Q. Okay. And is this -- based on your 6 understanding, is this the entirety of the paid media 7 campaign? Do you think -- or I'll let you respond.</p> <p>8 A. I don't know if it's all of it or not. It says 9 it's a wrap-up. It doesn't give an indication that 10 there's more than one page, but I -- I don't know.</p> <p>11 Q. Do you know if there was a wrap-up document 12 that contained all of the paid media campaign?</p> <p>13 A. I am not aware if a document other than this 14 one exists or not.</p> <p>15 Q. Does the vendor develop documents that contain 16 wrap-ups separately from the Secretary of State's 17 documents that they send to you?</p> <p>18 A. Yes. I think that's what this is.</p> <p>19 Q. Okay. And if there was such a document would 20 that have already been produced?</p> <p>21 A. Yes.</p> <p>22 Q. Assuming this is the entirety of the wrap-up, 23 then, of the paid media campaign, I'd like to direct your 24 attention to the first table, which is entitled, Radio 25 Flights.</p>
<p style="text-align: right;">282</p> <p>1 federal government this is what you'll be -- you'll need 2 to bring to vote, and it had the list of forms of photo 3 identification.</p> <p>4 Q. Okay. Are there -- have there been any 5 documents created that list everything that the Secretary 6 of State does with respect to photo ID education in 7 particular?</p> <p>8 A. I don't think that any such document has been 9 created, no, sir.</p> <p>10 Q. Okay. Let me mark one more document here as 11 31. 12 (Exhibit No. 31 marked)</p> <p>13 Q. And if you could just take a look at this, and 14 let me know when you've had a chance.</p> <p>15 A. (Reviewing document)</p> <p>16 Q. Do you recognize this document?</p> <p>17 A. I don't believe I've ever seen this document, 18 but I can tell you what it is.</p> <p>19 Q. Okay. What is it?</p> <p>20 A. It is -- I don't know if it's all or if it's 21 part of the paid media summary of the campaign prior to 22 the November 2013 election from our vendor TKO.</p> <p>23 Q. Okay. And is this -- so was TKO responsible 24 for each of these components, radio, cable, and print 25 newspaper ads?</p>	<p style="text-align: right;">284</p> <p>1 A. Yes, sir.</p> <p>2 Q. Is this -- assuming this is the entirety of the 3 radio flights, would this include both English and 4 Spanish -- English and Spanish components of your radio 5 campaign?</p> <p>6 A. See, I just don't -- I just don't know.</p> <p>7 Q. Okay. Well, do you see the column marked -- or 8 titled, Market?</p> <p>9 A. Yes.</p> <p>10 Q. Is that a list of all of the markets where 11 there were radio advertisements?</p> <p>12 A. I don't know. I know that they rely on the 13 Texas State Network for statewide stuff, and you can see 14 that most of the impressions are off of Texas State 15 Network.</p> <p>16 Q. Okay. And what is an impression?</p> <p>17 A. An impression is an opportunity for an audience 18 member to hear the spot.</p> <p>19 Q. Okay. And so you said it's an opportunity. It 20 is not -- is it not actually a measure of how many people 21 have actually seen the ad? Is that right?</p> <p>22 A. That's right.</p> <p>23 Q. So, for example, if someone -- let's say under 24 the cable TV flights, if someone had one of these 25 channels, they subscribed to one of these channels, would</p>

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<p style="text-align: right;">285</p> <p>1 that count as an impression?</p> <p>2 <b>A. Not exactly. They somehow do some magic with</b></p> <p>3 <b>the ratings for whenever the spot runs to determine how</b></p> <p>4 <b>many people had the opportunity to see the spot. So in</b></p> <p>5 <b>other words, it's not just how many people have access to</b></p> <p>6 <b>the channel, it's how many people were -- the ratings</b></p> <p>7 <b>show were actually on the channel.</b></p> <p>8 <b>Q. Okay. And is there -- there may be duplication</b></p> <p>9 <b>among some of these impressions? Some people might count</b></p> <p>10 <b>as being one of the impressions under the radio as well</b></p> <p>11 <b>as under cable; is that right?</b></p> <p>12 <b>A. Well, I don't know -- I don't know if that's --</b></p> <p>13 <b>if that's true or not. I would imagine that you could</b></p> <p>14 <b>have somebody who would have an opportunity to hear one</b></p> <p>15 <b>or more of these radio spots would also have an</b></p> <p>16 <b>opportunity to see one or more of these TV spots, yes.</b></p> <p>17 <b>Q. Right. And even within the radio flights, I</b></p> <p>18 <b>mean, someone may be in one of the city markets, but they</b></p> <p>19 <b>might also be counted within the statewide market; is</b></p> <p>20 <b>that right?</b></p> <p>21 <b>A. Certainly they could have been listening to the</b></p> <p>22 <b>spots when they played locally as well as on the state</b></p> <p>23 <b>network.</b></p> <p>24 <b>Q. Okay. So there's no -- the figure of</b></p> <p>25 <b>impressions doesn't -- it doesn't count for that</b></p>	<p style="text-align: right;">287</p> <p>1 <b>fill, and one of the parameters is market penetration and</b></p> <p>2 <b>specific target markets. And there was an emergency</b></p> <p>3 <b>procurement in the fall campaign, so the emergency</b></p> <p>4 <b>procurement didn't go through the full RFP process, and</b></p> <p>5 <b>so I don't know exactly what was communicated to TKO with</b></p> <p>6 <b>regard to what they needed to emphasize. I do know that</b></p> <p>7 <b>Alicia worked closely with TKO with regard to the</b></p> <p>8 <b>schedule for where things would be placed. And, of</b></p> <p>9 <b>course, the budget was all of our Secretary of State</b></p> <p>10 <b>money, so it had to be used judiciously.</b></p> <p>11 <b>Q. And would Alicia be the best person to speak to</b></p> <p>12 <b>about the details of the paid media campaign plan?</b></p> <p>13 <b>A. Alicia dealt with it directly. However, I'm</b></p> <p>14 <b>happy to answer any questions that you've got on it.</b></p> <p>15 <b>Q. Okay. And one question would be, how were</b></p> <p>16 <b>these specific markets chosen?</b></p> <p>17 <b>A. TKO's expertise.</b></p> <p>18 <b>Q. And so the Secretary of State didn't --</b></p> <p>19 <b>A. With the assistance and guidance of the</b></p> <p>20 <b>Secretary of State and what they wanted to emphasize to</b></p> <p>21 <b>get the most bang for our limited bucks.</b></p> <p>22 <b>Q. Okay. And what did you want to emphasize?</b></p> <p>23 <b>A. Number of impressions.</b></p> <p>24 <b>Q. The number of impressions. And what are the</b></p> <p>25 <b>types of places where you would get more impressions?</b></p>
<p style="text-align: right;">286</p> <p>1 <b>duplication?</b></p> <p>2 <b>A. The figure of impressions is a -- is a term of</b></p> <p>3 <b>art used in media campaigns to -- to measure how many --</b></p> <p>4 <b>how far-reaching the ad campaign was. So it's not</b></p> <p>5 <b>designed to be correlated directly with audience members</b></p> <p>6 <b>that specifically heard it or saw it, it's designed to</b></p> <p>7 <b>show how far-reaching the media campaign was, and so</b></p> <p>8 <b>there's not any way to do a one-for-one comparison of</b></p> <p>9 <b>actual views of the ads unless you do surveys, and as</b></p> <p>10 <b>part of our media campaigns we actually have the vendors</b></p> <p>11 <b>do audience surveys as well.</b></p> <p>12 <b>Q. Okay. And did -- what were all the surveys</b></p> <p>13 <b>that were done to determine where the paid media should</b></p> <p>14 <b>be placed?</b></p> <p>15 <b>A. I don't know how they make those</b></p> <p>16 <b>determinations. Again, we hire vendors with certain</b></p> <p>17 <b>expertise and we rely on that expertise to -- to do the</b></p> <p>18 <b>placements.</b></p> <p>19 <b>Q. Do you work with them to develop the criteria</b></p> <p>20 <b>that would go into determining a proper placement of</b></p> <p>21 <b>advertisements?</b></p> <p>22 <b>A. We -- you know, I can speak more particularly</b></p> <p>23 <b>of the 2014 campaign because I was part of the RFO</b></p> <p>24 <b>process. We put out in the request for proposal</b></p> <p>25 <b>parameters that we would like for a vendor to be able to</b></p>	<p style="text-align: right;">288</p> <p>1 <b>A. Places with lots of people.</b></p> <p>2 <b>Q. Places with lots of people. And those would</b></p> <p>3 <b>probably be the larger markets; is that right?</b></p> <p>4 <b>A. Larger markets and statewide, yes, sir.</b></p> <p>5 <b>Q. Okay. So was there any research done to</b></p> <p>6 <b>determine whether the largest markets where you wanted to</b></p> <p>7 <b>target your paid media campaign were also the places</b></p> <p>8 <b>where there happened to be more people who needed</b></p> <p>9 <b>education on the law?</b></p> <p>10 <b>A. I don't know how to determine who needs</b></p> <p>11 <b>education on the law. We figure with a -- with a</b></p> <p>12 <b>complete change -- or a significant change like photo ID</b></p> <p>13 <b>requirements that the widest possible market needs to</b></p> <p>14 <b>know about it since it's going to affect all voters and</b></p> <p>15 <b>all voters haven't previously known about it.</b></p> <p>16 <b>Q. Okay. And of the -- of the, I think, 19</b></p> <p>17 <b>different radio campaigns that are listed, as you look at</b></p> <p>18 <b>this list are -- are you familiar with the cities listed</b></p> <p>19 <b>here?</b></p> <p>20 <b>A. Sure.</b></p> <p>21 <b>Q. Okay. Are any of them, let's say, south of</b></p> <p>22 <b>Houston?</b></p> <p>23 <b>A. I don't know. I don't think Beaumont is south</b></p> <p>24 <b>of Houston. It's probably level with it.</b></p> <p>25 <b>Q. Okay. Well, are any of them in, let's say,</b></p>

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<p style="text-align: right;">289</p> <p>1 Corpus Christi or further south of that?</p> <p>2 A. Well, the statewide spots for the Texas State</p> <p>3 Network are -- are statewide, so yes.</p> <p>4 Q. Okay. And the statewide network -- if you look</p> <p>5 under the column marked Station, is that just -- is there</p> <p>6 just one station listed there?</p> <p>7 A. The Texas State Network feeds programming to</p> <p>8 stations all over the state.</p> <p>9 Q. Okay. So do you have a sense of how many radio</p> <p>10 stations is incorporated in the Texas statewide network?</p> <p>11 A. No, but I know that their -- their people who</p> <p>12 purchase their programming are rural and smaller market</p> <p>13 stations.</p> <p>14 Q. Okay. And how many counties did this get to --</p> <p>15 did this reach, I think is -- was the terminology used.</p> <p>16 A. I don't know. As far as I know every county</p> <p>17 was reached.</p> <p>18 Q. Okay. And --</p> <p>19 A. Had -- had impressions in every county.</p> <p>20 Q. So if one county had -- how many impressions</p> <p>21 does it take -- or how do you define reach? Would one</p> <p>22 impression, would that constitute being that a county was</p> <p>23 reached, if it received one impression?</p> <p>24 A. I don't know. You know, the -- when it comes</p> <p>25 to paid media, the more money you spend and the more</p>	<p style="text-align: right;">291</p> <p>1 Q. And what was that research? Did it just</p> <p>2 measure the number of impressions?</p> <p>3 A. No, no, it -- there was a full-blown survey</p> <p>4 performed by Burson Marsteller in connection with the</p> <p>5 spring 2014 campaign, and the research was -- you know,</p> <p>6 it was a general opinion survey done with regular opinion</p> <p>7 survey methods and metrics testing whether or not voters</p> <p>8 had heard of the Secretary of State's fall campaign,</p> <p>9 testing whether or not voters were familiar with the</p> <p>10 forms of ID, testing whether or not they had deficiencies</p> <p>11 in their level of knowledge with regard to any of this.</p> <p>12 And so the goal of that survey was to make sure that the</p> <p>13 education program -- the paid media education program for</p> <p>14 2014 addressed any deficiencies that remained after the</p> <p>15 fall 2013 campaign, and the Burson Marsteller survey had</p> <p>16 very high levels of familiarity with the requirement of</p> <p>17 having a photo ID, with the -- with the ability to get a</p> <p>18 free election identification certificate if needed. It</p> <p>19 was -- it was really a very -- from our perspective, the</p> <p>20 earned media, the paid media, the -- the complete news</p> <p>21 effort that occurred in 2013 had its intended results in</p> <p>22 that most voters across the state in all demographics</p> <p>23 were familiar with the need to have a photo ID and how to</p> <p>24 get one if they didn't have one.</p> <p>25 Q. Did you give this survey to your attorney in</p>
<p style="text-align: right;">290</p> <p>1 repetition you get, the more impressions you get, the</p> <p>2 more likely that you've actually penetrated the</p> <p>3 consciousness of a person or two or 15 or 30. So we</p> <p>4 didn't have very much money. This is money that we</p> <p>5 assembled together inside of our agency, because Help</p> <p>6 America Vote Act money for voter education can't be used</p> <p>7 for non-federal voter campaigns, so if we were going to</p> <p>8 have a campaign at all for the constitutional amendment</p> <p>9 and local election on the uniform date in November of</p> <p>10 2013, then we needed to come up with money from other</p> <p>11 agency strategies, and then what we did with that money</p> <p>12 that we came up with was put it inside of HAVA as a state</p> <p>13 match and then spent the money as state money, but using</p> <p>14 the HAVA strategy. And so that limitation meant that we</p> <p>15 had to maximize the reach of the program and not the</p> <p>16 depth. So, you know, to the extent that the quibble is</p> <p>17 with the depth of the program and whether or not it</p> <p>18 actually impacted particular voters in particular</p> <p>19 counties, we did the best we could with the money that we</p> <p>20 had, and our goal was to -- was to maximize the reach,</p> <p>21 not the depth, for the fall 2013 campaign.</p> <p>22 Q. Okay. And so was any research done after the</p> <p>23 fall 2013 campaign to determine -- to determine the</p> <p>24 effectiveness of the paid media campaign?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">292</p> <p>1 response to the request for production?</p> <p>2 A. I don't know if that's a proprietary document</p> <p>3 of Burson Marsteller or not.</p> <p>4 Q. But it would be within the Secretary of State's</p> <p>5 possession and responsive to the -- the request?</p> <p>6 A. I -- I don't know, because it was part of a</p> <p>7 request for a proposal process, and so I don't know if</p> <p>8 that stays confidential and is not subject to open</p> <p>9 records. I don't know if that's subject to something</p> <p>10 that would have to require confidential sealing. I don't</p> <p>11 know the discovery process on that document.</p> <p>12 Q. Okay. You mentioned that the survey tested the</p> <p>13 deficiencies in people's knowledge of the ID</p> <p>14 requirements. What were -- what were the deficiencies</p> <p>15 that you found?</p> <p>16 A. Very little.</p> <p>17 Q. Could you elaborate? Were there -- what were</p> <p>18 they?</p> <p>19 A. Well, like I said, most voters -- I don't</p> <p>20 remember the numbers -- were familiar with the need to</p> <p>21 bring a photo ID and they had a pretty good idea -- they</p> <p>22 could spontaneously regurgitate a significant number of</p> <p>23 the categories of photo ID.</p> <p>24 Q. Did it test knowledge of the -- like any</p> <p>25 components of the election identification certificate</p>



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<p style="text-align: right;">293</p> <p>1 process?</p> <p>2 A. I don't know if that was specifically asked</p> <p>3 about or if it was just more general, do you know that</p> <p>4 there's a free election identification certificate</p> <p>5 available from DPS. So I don't know specifically what</p> <p>6 the question was on EIC.</p> <p>7 Q. Okay. Going back to Exhibit 28.</p> <p>8 A. Okay.</p> <p>9 Q. If you look at I E., it says that you targeted</p> <p>10 rural voters, African-American voters, and Hispanic</p> <p>11 voters.</p> <p>12 A. Sure.</p> <p>13 Q. Why did you target such voters?</p> <p>14 A. Well, there's a -- there's a -- I don't know if</p> <p>15 you're familiar with the problem of media consumption in</p> <p>16 our modern age that we live in. We have a very</p> <p>17 fragmented media consumption environment. It used to be</p> <p>18 that people had the same television channels that they</p> <p>19 watched at the same time and were generally susceptible</p> <p>20 to advertising through limited number of channels. With</p> <p>21 our fragmented media environment, with the Internet and</p> <p>22 people consuming what they want to consume rather than</p> <p>23 what's pushed at them and the huge number of cable</p> <p>24 channels, it's just an amazingly difficult proposition to</p> <p>25 get a message out across enough platforms to reach the</p>	<p style="text-align: right;">295</p> <p>1 Q. And was it all spent?</p> <p>2 A. Yes.</p> <p>3 Q. And was it all spent specifically on education</p> <p>4 of the ID law?</p> <p>5 A. I believe so. I don't think there was any</p> <p>6 other general voter education message in the fall</p> <p>7 campaign. I think it was all photo ID. All of the radio</p> <p>8 advertising were forms of ID that are acceptable and</p> <p>9 required, and all the print media was the same and all</p> <p>10 the TV was the same.</p> <p>11 Q. And in Exhibit 29, Phase 1 of the 2014</p> <p>12 campaign, the \$400,000 figure there, is that -- would you</p> <p>13 give the same response that you just gave, that it's all</p> <p>14 on voter ID?</p> <p>15 A. No. The Help America Vote Act education money</p> <p>16 can't be specifically targeted to only one thing, so</p> <p>17 voter ID in -- in the voter education campaign this year</p> <p>18 is the largest, most substantive component of the</p> <p>19 education campaign, but it is in a larger, be prepared to</p> <p>20 vote campaign.</p> <p>21 Q. Okay. And what component of that would you</p> <p>22 say, then, is spent on voter ID?</p> <p>23 A. Most of it. And it's -- and it's featured in</p> <p>24 every single communication.</p> <p>25 Q. Okay. And in Phase 2 in Exhibit 30 it mentions</p>
<p style="text-align: right;">294</p> <p>1 people that you want to reach. And there are differences</p> <p>2 in the way media is consumed by demographic group, so</p> <p>3 African-American voters get a lot of their information</p> <p>4 from their community newspapers and Hispanic voters get</p> <p>5 a lot of information on mobile devices. And so the idea</p> <p>6 was to use the expertise of TKO and to use the expertise</p> <p>7 of Burson Marsteller for this year's campaign to make</p> <p>8 sure that we get the message across all the demographics</p> <p>9 in the state of Texas in this very challenging media</p> <p>10 environment given the limitations of the resources</p> <p>11 available.</p> <p>12 Q. Did you find that these groups of voters --</p> <p>13 would you say that these groups of voters</p> <p>14 disproportionately needed education on the ID</p> <p>15 requirements, then, because of deficiencies or problems</p> <p>16 in the way that they get information?</p> <p>17 A. No, that's -- that's not the implication at</p> <p>18 all. The implication is that since they consume media</p> <p>19 differently, to reach those voters there has to be a more</p> <p>20 targeted effort.</p> <p>21 Q. Okay. And you may have gone over this already.</p> <p>22 But the 400,000 figure at the top, is that -- what does</p> <p>23 that figure represent? Is that what was budgeted?</p> <p>24 A. Yes, that's -- that's money that we came up</p> <p>25 with from our agency to use for this effort.</p>	<p style="text-align: right;">296</p> <p>1 1.6 million. Do you have a sense of what proportion of</p> <p>2 that amount will be spent specifically on voter ID?</p> <p>3 A. Well, that's what I'm trying to say, that the</p> <p>4 campaign for 2014 is part of HAVA, and HAVA has more</p> <p>5 broad education requirements, so we have a more robust</p> <p>6 voter education campaign. Voter ID is central to that</p> <p>7 campaign, so every communication in this campaign is</p> <p>8 going to talk about voter ID. So it's not as if part of</p> <p>9 the money is going to voter ID and part of it's not.</p> <p>10 It's part of a bigger picture this year than it was last</p> <p>11 fall.</p> <p>12 Q. And do you have -- or has the budget for voter</p> <p>13 education been established for any elections after 2014?</p> <p>14 A. No.</p> <p>15 Q. Do you have plans to increase the budget in</p> <p>16 2016?</p> <p>17 A. I don't know what the legislature is going to</p> <p>18 do about that. I don't -- that's down the road.</p> <p>19 Q. What does it depend on?</p> <p>20 A. It depends on their willingness to give us</p> <p>21 money.</p> <p>22 Q. Okay. All right. So the -- back on</p> <p>23 Exhibit 31, the paid media wrap-up, the second table has</p> <p>24 to do with cable TV. How were those markets chosen?</p> <p>25 Were those also primarily chosen based on impressions?</p>

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<p style="text-align: right;">297</p> <p>1 A. Yes. And again, it's -- it would have been  2 TKO's expertise and consultation with Alicia Pierce.  3 Q. And the criteria was more in terms of how many  4 people would be hit and not so much who needed education  5 on voter ID?  6 A. The goal of the campaign was to have as wide  7 a reach as possible, to have as wide a reach for the  8 impressions as possible, yes, sir.  9 Q. Okay. And in -- in the third table, on the  10 print --  11 A. Can I -- I'm sorry.  12 Q. Sure.  13 A. What I would like to add is that when it comes  14 to cable TV advertising it can be a much more targeted  15 sort of effort, and I don't know which particular cable  16 channels are behind these spots, and so it could be that  17 there was some consideration given to the particular  18 demographic of the audience for a particular channel that  19 received one or more of these spots.  20 Q. And would there be a document somewhere that  21 would show all those considerations?  22 A. TKO should have some sort of sheet showing  23 where each individual spot was run.  24 Q. Would it show all the considerations that were  25 taken into account in determining that these were the</p>	<p style="text-align: right;">299</p> <p>1 worker training module as well as prepared a complete  2 PowerPoint for poll worker training that counties could  3 use if they didn't want to use our on-line module and --  4 and had made that change throughout all the materials,  5 and so we didn't have a specific photo ID poll worker  6 training piece after that. We also -- I lost my train of  7 thought. I'm sorry. That -- that -- that's basically  8 it. And the poll worker training that we had, the  9 counties can also add their own stuff to it. All we have  10 is what the minimum requirement is.  11 Q. Okay. And if a county were to add their own  12 stuff to the -- to the training that you provide them, do  13 you review those?  14 A. Usually, yes, sir.  15 Q. And do you have to give approval before those  16 are used?  17 A. I don't know if we have to. Counties usually  18 ask us to.  19 Q. Okay. And you mentioned the on-line poll  20 worker training tool. When did you say that was  21 finalized?  22 A. I don't remember the exact date. It would have  23 been in September of 2013, probably middle to the end of  24 the month.  25 Q. Okay. And do you have a sense of what</p>
<p style="text-align: right;">298</p> <p>1 best markets?  2 A. No.  3 Q. Okay. Switching topics to poll worker  4 training, you stated in prior deposition testimony  5 that -- or earlier today, actually, that local officials  6 are responsible for making sure that the poll workers go  7 through training; is that right?  8 A. That's right.  9 Q. Okay. And what are all the materials that  10 the -- or what is the Secretary of State's involvement in  11 developing poll workers' materials?  12 A. We -- we do -- in 2013 it was kind of a special  13 thing because we were in the midst of implementing the  14 law at the -- at -- on the fly. And so, you know, in  15 August and September we had local elections in Hidalgo  16 County and Galveston, and so they needed to train their  17 poll workers on photo ID requirements right away, and so  18 we adopted some of the materials that we used for our  19 county election officials seminar in July and made that  20 into poll worker training with regard to photo ID, and we  21 sent those PowerPoints to the counties to use in  22 connection with the rest of their poll worker training  23 process for those local elections. By the time the poll  24 worker training came around in September for the November  25 election we had completely revamped our on-line poll</p>	<p style="text-align: right;">300</p> <p>1 percentage of poll workers are trained through that tool?  2 A. I would -- I would say a low percent.  3 Q. Okay. And what is the breakdown of the way in  4 which poll workers are trained?  5 A. Well, in any given election you could have as  6 many as 20,000 poll workers, and we've had 13,000 people  7 use the on-line poll worker training tool since it's been  8 in effect since 2007, so that tells you right away that  9 the numbers percentage-wise of poll workers actually  10 being trained with the on-line tool is small.  11 Q. Okay. And you said 20 percent? I'm sorry.  12 What was --  13 A. No. Every election has probably more than  14 20,000 poll workers, and 13,000 have used on-line poll  15 worker training since its inception eight years ago.  16 Q. Got it.  17 A. Seven years ago.  18 Q. Okay. And have you received feedback from  19 election officials or poll workers about the tool?  20 A. The feedback that we've received regarding the  21 on-line poll worker training tool has been positive for  22 the ones who use it. The reason that it's not used as  23 much as we would like is because the county election  24 officials like to have in-person training sessions where  25 they can interface with the poll workers and, you know,</p>

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<p style="text-align: right;">301</p> <p>1 have -- have that feedback loop that I mentioned earlier.</p> <p>2 Q. Okay. Let's mark this document.</p> <p>3 (Exhibit No. 32 marked)</p> <p>4 Q. I'll give you a chance to look through a few</p> <p>5 pages.</p> <p>6 A. Okay.</p> <p>7 Q. Okay. And do you know what this is?</p> <p>8 A. This appears to be screen shots from our</p> <p>9 on-line poll worker training.</p> <p>10 Q. Okay. And do you have the underlying documents</p> <p>11 that make -- does the Secretary of State keep the</p> <p>12 underlying documents that make up the on-line poll worker</p> <p>13 training, the -- the pages? Are those in your system</p> <p>14 somewhere?</p> <p>15 A. I'm not sure in what form they exist. I know</p> <p>16 that Leticia Salazar in my office is the one who has this</p> <p>17 responsibility and role. She gets the input from the</p> <p>18 attorneys about the content, but actually making the</p> <p>19 changes on here is her province, and I believe that she</p> <p>20 has this on one of our hard drives that we share in the</p> <p>21 elections division and that she's got the previous</p> <p>22 version before photo ID saved as well.</p> <p>23 Q. Okay. And so will you produce those documents</p> <p>24 if -- if you haven't already?</p> <p>25 MR. KEISTER: Counsel, the witness isn't</p>	<p style="text-align: right;">303</p> <p>1 the text underneath Key Point?</p> <p>2 A. I do.</p> <p>3 Q. Okay. And is that an accurate statement of the</p> <p>4 law?</p> <p>5 A. It is not.</p> <p>6 Q. Okay. And does that basically say the same</p> <p>7 thing, that -- could you read it out loud, please.</p> <p>8 A. Sure. It says: Each voter must present a</p> <p>9 voter registration certificate or one of eight acceptable</p> <p>10 forms of ID.</p> <p>11 Q. Okay. And neither of those statements are</p> <p>12 accurate with respect to the -- the voter ID law,</p> <p>13 correct, currently?</p> <p>14 A. That's correct.</p> <p>15 Q. Okay. And you haven't received any feedback</p> <p>16 from election officials or poll workers about -- about</p> <p>17 this?</p> <p>18 A. We have not.</p> <p>19 Q. Okay.</p> <p>20 A. What I don't understand is why there's a button</p> <p>21 that says: Photo ID now required for voting in Texas.</p> <p>22 Is there a way for me to get a copy of this and leave</p> <p>23 with it today? I don't want to take the exhibit, but I</p> <p>24 want this.</p> <p>25 Q. Yes. Yes, I'll give you my other copy of it.</p>
<p style="text-align: right;">302</p> <p>1 going to make agreements on production, but if they</p> <p>2 haven't been produced, you can certainly request them.</p> <p>3 Q. Okay. Could you flip to the fourth page on</p> <p>4 here. Okay. If I represent to you that this is the --</p> <p>5 the part of the training that deals with qualifying</p> <p>6 voters at the polls, does that sound accurate?</p> <p>7 A. Well, that's -- that's what the first page of</p> <p>8 this says.</p> <p>9 Q. Okay. And the date at the bottom right-hand</p> <p>10 corner, that's yesterday; is that correct?</p> <p>11 A. That's what it says.</p> <p>12 Q. Okay. And could you just review the text</p> <p>13 underneath the title, Step 1: Voter Registration</p> <p>14 Certificate?</p> <p>15 A. Uh-huh.</p> <p>16 Q. Does that seem like an accurate statement of</p> <p>17 the law?</p> <p>18 A. It does not.</p> <p>19 Q. What does it say?</p> <p>20 A. It says for a voter to present their voter</p> <p>21 registration certificate as it is preferred.</p> <p>22 Q. And could you read the sentence after that?</p> <p>23 A. There are eight other acceptable forms of ID.</p> <p>24 Q. Okay. And the -- on that same page, on the</p> <p>25 sidebar underneath the title, Key Point, do you see that</p>	<p style="text-align: right;">304</p> <p>1 MR. ROSENBERG: Or we can make another</p> <p>2 copy.</p> <p>3 Q. Okay. Switching topics again, do you ask</p> <p>4 counties to keep track of persons who are turned away at</p> <p>5 the polls?</p> <p>6 A. No.</p> <p>7 Q. Okay. So if someone was not provided or if</p> <p>8 there's no ballot and turned away, you have no way of</p> <p>9 tracking that?</p> <p>10 A. Well, I don't know what you mean by turned</p> <p>11 away. They shouldn't be turned away. They can</p> <p>12 voluntarily decide to leave and go get an acceptable form</p> <p>13 of ID and come back. So if we hear about a voter being</p> <p>14 turned away we will call that to the county election</p> <p>15 official's attention and ask them to remedy it with the</p> <p>16 poll workers.</p> <p>17 Q. Okay. And how would you normally hear of that</p> <p>18 happening?</p> <p>19 A. A voter calls.</p> <p>20 Q. Through the hotline that you mentioned earlier?</p> <p>21 A. That's right.</p> <p>22 Q. How is that hotline advertised?</p> <p>23 A. Well, there -- there's information in the</p> <p>24 polling place. The notice of ID requirements has the</p> <p>25 phone number on it. I don't know. There's probably</p>

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<p style="text-align: right;">305</p> <p>1 several other pieces of information inside the polling</p> <p>2 place posted on the walls that has the phone number on it</p> <p>3 as well as the voter registration certificate has the</p> <p>4 phone number on it.</p> <p>5 Q. Okay.</p> <p>6 A. And if you Google Secretary of State you'll get</p> <p>7 VoteTexas.Gov or SOS.TX.US.Gov, and both of them have the</p> <p>8 phone number.</p> <p>9 Q. And the phone number, is that a general phone</p> <p>10 number to the Secretary of State's Office or is this a</p> <p>11 separate hotline that is advertised separately?</p> <p>12 A. No, no, it's -- it's -- it's our phone number.</p> <p>13 Q. Okay.</p> <p>14 A. The voter hotline is our phone number.</p> <p>15 Q. Okay. One last set of questioning on the</p> <p>16 mobile EICs. What factors do you use to determine the</p> <p>17 hours of the -- for the mobile EIC units?</p> <p>18 A. Well, the hours that the building will be open</p> <p>19 and the hours the DPS is available to operate the</p> <p>20 equipment.</p> <p>21 Q. Anything else?</p> <p>22 A. That was for the fall campaign, so I don't --</p> <p>23 sometimes the counties want extended hours or we'd ask</p> <p>24 DPS to provide extended hours or we'd make sure that the</p> <p>25 county used a building that had extended hours available,</p>	<p style="text-align: right;">307</p> <p>1 voters.</p> <p>2 Q. Do you know what they did?</p> <p>3 A. I do know that they emphasized community</p> <p>4 newspapers in African-American communities, that they</p> <p>5 primarily geared the mobile app and mobile information</p> <p>6 for Hispanic voters, and then, of course, used</p> <p>7 advertising on media consumed by those voters.</p> <p>8 Q. Do you know what studies or analyses were done</p> <p>9 as to which forms of media were best to be used for</p> <p>10 purposes of reaching certain minorities?</p> <p>11 A. I don't. That would be -- that would be within</p> <p>12 the expertise of Burson or TKO.</p> <p>13 Q. And you mentioned polling that was done by</p> <p>14 Burson. Do you recall whether the polling results were</p> <p>15 broken down in terms of the -- how successful the</p> <p>16 campaign was for different minority groups?</p> <p>17 A. I believe that there was demographic</p> <p>18 information in the poll, yes, sir. I don't know how</p> <p>19 the -- how do you call it -- the margin of error might</p> <p>20 have changed for smaller subgroups within the large</p> <p>21 group.</p> <p>22 Q. Do you know what the results were within the</p> <p>23 subgroups?</p> <p>24 A. I don't. I don't recall off the top of my</p> <p>25 head.</p>
<p style="text-align: right;">306</p> <p>1 but primarily the drivers of availability were the</p> <p>2 building being open and DPS being available.</p> <p>3 Q. Okay. So you didn't prioritize weekend hours</p> <p>4 or weekday evening hours then?</p> <p>5 A. No.</p> <p>6 MR. AGRAHARKAR: Okay. If I could just</p> <p>7 have a moment off the record.</p> <p>8 (Off the record 4:51 p.m. to 4:52 p.m.)</p> <p>9 MR. ROSENBERG: I have a few follow-up</p> <p>10 questions and then we'll pass the witness.</p> <p>11 EXAMINATION</p> <p>12 BY MR. ROSENBERG:</p> <p>13 Q. Just going back to the person that</p> <p>14 Mr. Agraharkar spoke about in terms of whether someone</p> <p>15 can use a suspended license as one of the SB 14 forms of</p> <p>16 identification. Can one use a revoked license?</p> <p>17 A. Well, again, I don't know if a revoked license</p> <p>18 will still be in the driver's possession. If it is and</p> <p>19 it's not expired, then yes.</p> <p>20 Q. And then just a few follow-ups on the issue of</p> <p>21 the targeting of blacks -- black voters and Hispanic</p> <p>22 voters. Precisely how was that targeting done?</p> <p>23 A. That's -- that's one of those situations where</p> <p>24 we rely upon the expertise of the vendor to -- to make</p> <p>25 sure that they use appropriate channels to get to those</p>	<p style="text-align: right;">308</p> <p>1 Q. And who would be the best person to ask those</p> <p>2 questions of?</p> <p>3 A. Burson Marsteller.</p> <p>4 Q. Who at Burson Marsteller?</p> <p>5 A. I don't know.</p> <p>6 Q. Who would know at the Secretary of State?</p> <p>7 A. Well, I would whenever my mind's working</p> <p>8 properly. I can't remember her name off the top of my</p> <p>9 head who's our account executive at Burson.</p> <p>10 MR. ROSENBERG: Okay. We pass the</p> <p>11 witness.</p> <p>12 EXAMINATION</p> <p>13 BY MR. ROSS:</p> <p>14 Q. Hello, Mr. Ingram.</p> <p>15 A. Hello.</p> <p>16 Q. How are you?</p> <p>17 A. Marvelous.</p> <p>18 Q. My name is Deuel Ross. I'm an attorney with</p> <p>19 the NAACP Legal Defense Fund.</p> <p>20 A. Yes, sir.</p> <p>21 Q. And I'm representing the Texas League of Young</p> <p>22 Voters. I'm going to talk to you a little bit about the</p> <p>23 availability of EICs and ask you some follow-up questions</p> <p>24 about the mobile stations.</p> <p>25 A. Okay.</p>

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<p style="text-align: right;">309</p> <p>1 Q. Can you tell me -- can you walk me through the</p> <p>2 process of how the locations of the mobile stations for</p> <p>3 Phase 2 were decided?</p> <p>4 A. Sure. As I -- as I mentioned to Ms. Westfall,</p> <p>5 there were two sort of driving characteristics of the</p> <p>6 fall mobile EIC location placement, and number one was</p> <p>7 where are concentrations of voters that don't match with</p> <p>8 a DL or a Texas ID in our process and where are wide-open</p> <p>9 empty spaces away from a driver license office. So those</p> <p>10 were the two driving considerations for location of the</p> <p>11 mobile EIC units in the fall of 2013.</p> <p>12 Q. Were there any other factors taken into</p> <p>13 consideration?</p> <p>14 A. I believe that some counties requested the</p> <p>15 presence of a -- of an election identification</p> <p>16 certificate mobile station, and so we certainly took</p> <p>17 those into account if someone requested it.</p> <p>18 Q. Do you know who from those counties requested</p> <p>19 it?</p> <p>20 A. I know that Dallas wanted a repeat visit. I</p> <p>21 know that Bexar County wanted to make sure that -- that</p> <p>22 we had a repeat visit to Bexar County. I don't know of</p> <p>23 any others off the top of my head.</p> <p>24 Q. Would they be the county registrars that</p> <p>25 requested it or anyone specific?</p>	<p style="text-align: right;">311</p> <p>1 cold.</p> <p>2 Q. What about people who weren't in government who</p> <p>3 requested the presence of EICs?</p> <p>4 A. There -- we had some interactions with the</p> <p>5 student government as well as the administration over at</p> <p>6 Prairie View A&amp;M on an unrelated matter last year, and</p> <p>7 they wanted to make sure that we had an EIC unit come to</p> <p>8 Prairie View, and so we accommodated that request.</p> <p>9 Q. How did you accommodate that request?</p> <p>10 A. By having an election identification</p> <p>11 certificate come to the Prairie View campus.</p> <p>12 Q. Okay.</p> <p>13 A. Mobile unit.</p> <p>14 Q. Do you know what days it was --</p> <p>15 A. I do not. It was -- it was early on because we</p> <p>16 knew their request existed early.</p> <p>17 Q. Early on like a month maybe?</p> <p>18 A. I would say -- yeah, I would say late September</p> <p>19 or early October. I don't know for sure though.</p> <p>20 Q. Do you know how many days it ended up being?</p> <p>21 A. I don't know. I would have to talk to</p> <p>22 Robin German. She was the election administrator for</p> <p>23 Waller County at the time and she had at least two units</p> <p>24 to work with, and so I don't know how many days she spent</p> <p>25 on campus and how many days were elsewhere around the</p>
<p style="text-align: right;">310</p> <p>1 A. Both Dallas and Bexar County have elections</p> <p>2 administrators, and so it would have been their office.</p> <p>3 Q. Did any state-elected officials request that</p> <p>4 something come?</p> <p>5 A. I don't know if we had any state-elected</p> <p>6 officials. I'm pretty sure that Representative Turner</p> <p>7 wanted to make sure that there were some in his district,</p> <p>8 and we accommodated that. I don't know of any others</p> <p>9 that made the specific request to have EIC unit</p> <p>10 placement.</p> <p>11 Q. What about -- I know you mentioned some city</p> <p>12 officials; I think it was in Trinity.</p> <p>13 A. That's right.</p> <p>14 Q. Anyone else who --</p> <p>15 A. The city manager in Trinity, Buddy Drake,</p> <p>16 wanted to make sure that we came to Trinity this -- this</p> <p>17 spring.</p> <p>18 Q. And were there any other city officials who</p> <p>19 requested it?</p> <p>20 A. Not that I know of off the top of my head.</p> <p>21 Q. Okay. Did you place any special priority on</p> <p>22 who was requesting the presence of the mobile stations?</p> <p>23 A. No. We've -- we've had a low enough number of</p> <p>24 requests that all of them could be accommodated. We</p> <p>25 haven't had to prioritize or leave anybody out in the</p>	<p style="text-align: right;">312</p> <p>1 county.</p> <p>2 Q. Do you know how many days ahead of time</p> <p>3 Waller County was notified?</p> <p>4 A. I don't.</p> <p>5 Q. So, sir, going back a little bit to the</p> <p>6 process, can you explain again what the role of the</p> <p>7 Secretary of State is in deciding the location of a</p> <p>8 mobile station?</p> <p>9 A. Well, it was our role to -- what we did is the</p> <p>10 matching process to identify ZIP codes where there were</p> <p>11 significant numbers of non-matches, so we -- we had that</p> <p>12 role to play, and then it's also been our role to</p> <p>13 interface with the county election officials to -- to</p> <p>14 talk to them about where their voters might benefit from</p> <p>15 an election identification certificate mobile station,</p> <p>16 and then once we get locations from the county, to</p> <p>17 communicate that information to the Department of Public</p> <p>18 Safety so that they could do their process to make sure</p> <p>19 it was a sufficient, adequate location for a unit.</p> <p>20 Q. Okay. And so if a -- if a county requested the</p> <p>21 presence of a unit and DPS disagreed with that location,</p> <p>22 what role would the Secretary of State play in sort of</p> <p>23 mediating that?</p> <p>24 A. Well, I don't know if you're asking if a county</p> <p>25 asked for EIC units and DPS refused in general, because</p>



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<p style="text-align: right;">313</p> <p>1 <b>that never happened.</b></p> <p>2 Q. Well, if they refused for a particular</p> <p>3 location.</p> <p>4 A. Right. And there was a -- there was a location</p> <p>5 identified over in East Texas -- I think it was Liberty</p> <p>6 County, as I mentioned before -- that DPS felt was not</p> <p>7 suitable, and so we asked the county election</p> <p>8 administrator to find a backup location, and she did.</p> <p>9 Q. Okay. So if there's a dispute between DPS and</p> <p>10 your office regarding the location of a -- of a mobile</p> <p>11 unit, who gets the final say in terms of where the</p> <p>12 location will be?</p> <p>13 A. I don't know. There -- there never has been</p> <p>14 such a dispute.</p> <p>15 Q. If there were a dispute, do you --</p> <p>16 MR. KEISTER: Objection, calls for</p> <p>17 speculation.</p> <p>18 A. Yeah, I just -- I can't imagine that happening.</p> <p>19 Q. Are there particular groups of individuals</p> <p>20 within the Secretary of State's Office who makes -- make</p> <p>21 decisions about where to locate mobile stations?</p> <p>22 A. The -- the team for the fall was myself,</p> <p>23 Mr. Jackson, and our deputy secretary, Coby Shorter,</p> <p>24 Currently we have my administration manager, Louri</p> <p>25 O'Leary, who's heading up that process.</p>	<p style="text-align: right;">315</p> <p>1 my manager's job description.</p> <p>2 Q. Okay. If we go back to -- I believe it's</p> <p>3 marked Exhibit 4, the Memorandum of Understanding between</p> <p>4 DPS and the Secretary of State's Office.</p> <p>5 A. Sure.</p> <p>6 Q. Would you look at page 2 of that document?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And do you see the first full paragraph that</p> <p>9 begins: Mobile EIC centers?</p> <p>10 A. Yes.</p> <p>11 Q. Can you read that paragraph, just review it</p> <p>12 briefly?</p> <p>13 A. Sure. (Reviewing document) Okay.</p> <p>14 Q. Is that your understanding of the Secretary of</p> <p>15 State's role in deciding the location of EICs?</p> <p>16 A. I believe that accurately summarizes our role.</p> <p>17 I will say that for this -- for this year's effort we've</p> <p>18 changed that two day to five day.</p> <p>19 Q. Okay. Can you read aloud your -- the portion</p> <p>20 that you believe is your understanding of the Secretary</p> <p>21 of State's role in that paragraph?</p> <p>22 A. Sure. It says: Mobile EIC centers will move</p> <p>23 throughout the state to locations determined by SOS and</p> <p>24 agreed to by DPS. SOS will notify DPS in writing of the</p> <p>25 final location for each mobile EIC center at least two</p>
<p style="text-align: right;">314</p> <p>1 Q. And is there -- is there a task force between</p> <p>2 the Secretary of State and DPS that makes those</p> <p>3 decisions?</p> <p>4 A. Currently the primary point of contact between</p> <p>5 DPS and Secretary of State is Louri O'Leary, one of my</p> <p>6 managers.</p> <p>7 Q. How were they selected for that position? How</p> <p>8 were they selected? How were the individuals you just</p> <p>9 mentioned on the Secretary of State's task force selected</p> <p>10 to join in?</p> <p>11 A. Well, last fall Wroe, myself, and the deputy</p> <p>12 secretary did it because it needed to be done and the</p> <p>13 time to do it was right now. We -- the deputy and I</p> <p>14 talked about having that responsibility shifted to</p> <p>15 someone else in the office, and so that's -- we felt like</p> <p>16 Louri is very good at event planning sort of stuff --</p> <p>17 she's an administrator by nature -- and so that she would</p> <p>18 be a good person for that role, and we asked Louri to</p> <p>19 take it on.</p> <p>20 Q. So is it fair to characterize it as a sort of</p> <p>21 ad hoc committee, people -- or you picked folks who you</p> <p>22 thought would be good to make those decisions or to work</p> <p>23 on this project?</p> <p>24 A. I wouldn't -- I wouldn't call it ad hoc. I</p> <p>25 would -- I would characterize it more as adding to one of</p>	<p style="text-align: right;">316</p> <p>1 full business days in advance of the requested start date</p> <p>2 of operations at that location.</p> <p>3 Q. And your -- your testimony was that it's now</p> <p>4 five days, correct?</p> <p>5 A. That's right. And I don't know if we've done</p> <p>6 an official written modification of this MOU, but we</p> <p>7 definitely have agreed that it's five days and not two</p> <p>8 now.</p> <p>9 Q. So then based on your understanding of this</p> <p>10 paragraph and the way the process works, the Secretary of</p> <p>11 State's Office has final authorization about the location</p> <p>12 of mobile stations?</p> <p>13 A. Yeah, I don't think that that's exactly what</p> <p>14 this says. What this says is the location is determined</p> <p>15 by SOS and agreed to by DPS, and that's the way it's</p> <p>16 worked in practice, that -- that our office has</p> <p>17 determined where the mobile EIC units should go. We</p> <p>18 offered those locations to DPS. DPS has agreed to almost</p> <p>19 all of them except one that I can remember off the top of</p> <p>20 my head.</p> <p>21 Q. And that's the Liberty Hill location -- or</p> <p>22 excuse me -- Liberty location?</p> <p>23 A. Liberty County location, right. And it could</p> <p>24 be Orange and it could be Hardin. I just -- it's over in</p> <p>25 Southeast Texas.</p>

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<p style="text-align: right;">317</p> <p>1 Q. And do you know why the location in Liberty was</p> <p>2 considered unsuitable by DPS?</p> <p>3 A. I don't remember exactly what DPS' concern was.</p> <p>4 I believe that it was that the room was too small, too</p> <p>5 crowded, and they felt like there needed to be more space</p> <p>6 for -- for everything to work properly.</p> <p>7 Q. Okay. You previously testified that the</p> <p>8 Secretary of State's Office used a January 2014 no-match</p> <p>9 list to determine the location of the Phase 2 mobile</p> <p>10 stations?</p> <p>11 A. No, it was a July 2013 no-match list.</p> <p>12 Q. July 2013. My apologies. So can you explain</p> <p>13 the process in which the Secretary of State used that</p> <p>14 no-match list to determine where mobile stations would be</p> <p>15 located?</p> <p>16 A. Well, as I've described before, there were two</p> <p>17 drivers for locations for the mobile EIC units in</p> <p>18 Phase 2; one was rural nature of some parts of Texas, the</p> <p>19 other was ZIP codes that had a high number of no matches</p> <p>20 for ID. And so what we did was roughly split the mobile</p> <p>21 units, some for taking care of rural voters and some for</p> <p>22 taking care of concentrations in ZIP codes of</p> <p>23 non-matches, and then we just worked the list.</p> <p>24 Q. Okay.</p> <p>25 THE REPORTER: Excuse me, counsel. Can we</p>	<p style="text-align: right;">319</p> <p>1 Baptist Church location was in reasonably close proximity</p> <p>2 to the University of Houston. This spring we went to</p> <p>3 Texas Women's University fulfilling a request, and I'm</p> <p>4 not sure if we actually went to University of Texas or</p> <p>5 just talked about it. But yes.</p> <p>6 Q. Okay. So you mentioned -- what was the women's</p> <p>7 college? What was the name of that?</p> <p>8 A. Texas Women's University.</p> <p>9 Q. And that was in response to a request?</p> <p>10 A. That's right.</p> <p>11 Q. Do you know who made that request?</p> <p>12 A. It was a graduate student and a professor. I</p> <p>13 don't remember their names.</p> <p>14 Q. Okay. Do you know how they made that request?</p> <p>15 A. In an e-mail to me.</p> <p>16 Q. And the location at the University of Houston,</p> <p>17 how was that request -- or why was that location chosen?</p> <p>18 A. Well, the ZIP codes in that proximity were --</p> <p>19 for Harris County were some of the highest non-match ZIP</p> <p>20 codes, and so we wanted a location in that area. The</p> <p>21 Holman Street Baptist Church is a place that our deputy</p> <p>22 secretary is familiar with, and they were willing to make</p> <p>23 their facilities available for an extended period of time</p> <p>24 for this purpose, and so we were accommodating a local</p> <p>25 population that was pretty rich in non-matches. So I</p>
<p style="text-align: right;">318</p> <p>1 go off the record for a minute?</p> <p>2 MR. ROSS: Okay.</p> <p>3 MR. KEISTER: You want to take a break for</p> <p>4 a couple of minutes?</p> <p>5 THE REPORTER: If you don't mind.</p> <p>6 MR. ROSS: We can take a few minutes</p> <p>7 break.</p> <p>8 (Recess from 5:11 p.m. to 5:15 p.m.)</p> <p>9 BY MR. ROSS:</p> <p>10 Q. You mentioned that in determining where to</p> <p>11 place EICs -- or excuse me -- mobile stations you</p> <p>12 primarily looked to whether a location was rural and then</p> <p>13 whether or not there were ZIP codes with a high number of</p> <p>14 no matches, people on the no-match list.</p> <p>15 A. That's right.</p> <p>16 Q. Okay. And you also mentioned the request from</p> <p>17 Prairie View was a particular location that -- well, you</p> <p>18 mentioned Prairie View, right?</p> <p>19 A. Right.</p> <p>20 Q. Okay. Is there -- was there any other effort</p> <p>21 to locate a mobile station near a college?</p> <p>22 A. Sure. One of the mobile units that was pretty</p> <p>23 consistently in place throughout the period before the</p> <p>24 November 13 election was at Lone Star College, a junior</p> <p>25 college campus in Houston, and then the Holman Street</p>	<p style="text-align: right;">320</p> <p>1 don't know if they actually needed IDs or not, but that</p> <p>2 was the -- the primary purpose of the Holman Street</p> <p>3 Baptist Church location was to accommodate those ZIP</p> <p>4 codes. The secondary purpose was it was close to the</p> <p>5 University of Houston.</p> <p>6 Q. Okay. You said it was there for an extended</p> <p>7 period of time?</p> <p>8 A. That's right.</p> <p>9 Q. Do you know how long that was?</p> <p>10 A. It was there almost the entire period that EIC</p> <p>11 units were out and about, from late September to after</p> <p>12 the election. I think that the Holman Street unit was</p> <p>13 used in another county for a few days during that period,</p> <p>14 but it was back at Holman Street thereafter.</p> <p>15 Q. Okay. And during that period, that couple of</p> <p>16 months period it sounds like, was the mobile unit</p> <p>17 stationed there for every day of the week?</p> <p>18 A. Workdays, yes, sir.</p> <p>19 Q. Workdays. Was it stationed there after</p> <p>20 four o'clock?</p> <p>21 A. I don't know what the hours were. I don't</p> <p>22 believe so. Maybe 4:30.</p> <p>23 Q. Okay. You also mentioned the West Star</p> <p>24 University; was that it? Or excuse me. I'm sorry.</p> <p>25 Lone Star. I'm in Texas.</p>

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<p style="text-align: right;">321</p> <p>1 MR. ROSS: Let me strike that question.</p> <p>2 Q. The Lone Star --</p> <p>3 A. Lone Star College.</p> <p>4 Q. -- College, yes.</p> <p>5 A. Yes.</p> <p>6 Q. How was the decision to locate a mobile unit</p> <p>7 made there?</p> <p>8 A. That was -- the location for that was chosen</p> <p>9 with regard to Representative Turner's request. I</p> <p>10 believe that that location is within his district.</p> <p>11 Q. Okay. Do you know when that location was open?</p> <p>12 A. It was open the same as the Holman Street,</p> <p>13 almost the entire time.</p> <p>14 Q. Okay. Do you know the days in which it was</p> <p>15 open, days of the week?</p> <p>16 A. It would have been Monday through Friday.</p> <p>17 Q. Do you know the hours?</p> <p>18 A. Business hours. I'm not sure exactly what the</p> <p>19 schedule was.</p> <p>20 Q. After four o'clock?</p> <p>21 A. Maybe to 4:30.</p> <p>22 Q. Okay. Do you know why those hours were chosen</p> <p>23 for that location?</p> <p>24 A. DPS availability and the -- and the hours that</p> <p>25 the building was open.</p>	<p style="text-align: right;">323</p> <p>1 administrator in Webb County.</p> <p>2 Q. Okay. Do you know why he asked for the</p> <p>3 extended hours?</p> <p>4 A. He thought it would be good for his voters.</p> <p>5 Q. Do you know why he thought it would be good for</p> <p>6 his voters?</p> <p>7 A. I don't.</p> <p>8 Q. Were you involved in that decision to open the</p> <p>9 office for extended hours, the mobile station?</p> <p>10 A. I was the interface between Webb County and the</p> <p>11 DPS.</p> <p>12 Q. Okay. Do you know if the Secretary of State's</p> <p>13 Office supported that effort to open the Webb County</p> <p>14 mobile station for extended hours?</p> <p>15 A. Sure.</p> <p>16 (Exhibit No. 33 marked)</p> <p>17 Q. Okay. I'd like to introduce what I marked as</p> <p>18 Exhibit 31 -- 32. I'm sorry.</p> <p>19 THE REPORTER: There's a 32 also.</p> <p>20 Q. Oh, 33.</p> <p>21 MR. KEISTER: I suggest we ask the court</p> <p>22 reporter.</p> <p>23 THE REPORTER: 33.</p> <p>24 Q. Okay. So looking at Exhibit 31 (sic), can you</p> <p>25 turn to page 2, which is Bates-stamped number</p>
<p style="text-align: right;">322</p> <p>1 Q. Okay. You said that you used a -- excuse me --</p> <p>2 the no-match list in part to determine locations. Did</p> <p>3 you rely on any data to determine when people were</p> <p>4 available in those locations, any -- did the Secretary of</p> <p>5 State do any studies to determine when people who were on</p> <p>6 the no-match list were available to go to EICs?</p> <p>7 A. No.</p> <p>8 Q. Or excuse me. Go to mobile stations?</p> <p>9 A. No.</p> <p>10 Q. You previously testified that Webb County was</p> <p>11 the only county you're aware of where a mobile unit was</p> <p>12 run after business hours?</p> <p>13 A. It's my belief that at least Webb County had a</p> <p>14 location that had some extra hours.</p> <p>15 Q. Do you know how that decision was made in</p> <p>16 Webb County?</p> <p>17 A. They asked for it and we asked DPS for it.</p> <p>18 Q. Okay. Do you know what DPS' response was? Do</p> <p>19 you remember?</p> <p>20 A. I don't remember exactly how it went down. I</p> <p>21 don't remember if Oscar wanted the locations to be</p> <p>22 extended hours every day and DPS gave him one. I don't</p> <p>23 remember how that process happened.</p> <p>24 Q. Oscar was --</p> <p>25 A. Oscar Villarreal, the -- the elections</p>	<p style="text-align: right;">324</p> <p>1 TEX 00462498?</p> <p>2 A. Yes, sir.</p> <p>3 Q. In the middle of that page do you see the</p> <p>4 e-mail from Mr. Jackson to Mr. Rodriguez dated October 2,</p> <p>5 2013, at 10:24 a.m.?</p> <p>6 A. Yes.</p> <p>7 Q. Can you please review that e-mail?</p> <p>8 A. Certainly. (Reviewing document)</p> <p>9 Q. So have you had a chance to look at it?</p> <p>10 A. Uh-huh.</p> <p>11 Q. Can you read the line beginning with, Keith</p> <p>12 has?</p> <p>13 A. Right.</p> <p>14 Q. Can you read it aloud, please.</p> <p>15 A. Thank you. Keith has already contacted them to</p> <p>16 request the change in hours from 9 to 4 with one day</p> <p>17 available for off-business hours as we discussed.</p> <p>18 Q. Do you remember why you requested that the</p> <p>19 hours for the mobile station be from 9:00 a.m. to</p> <p>20 4:00 p.m.?</p> <p>21 A. DPS made that request.</p> <p>22 Q. Well, this says: Keith has already contacted</p> <p>23 them to request the change in hours from 9 a.m. to 4 p.m.</p> <p>24 A. Right, because DPS wanted me to make that</p> <p>25 request of the county.</p>

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<p style="text-align: right;">325</p> <p>1 Q. Okay. And did you oppose that request at all</p> <p>2 or did you have an opinion on that request to limit the</p> <p>3 hours from the evening?</p> <p>4 A. I don't -- I don't understand your question.</p> <p>5 Q. Well, your testimony was that the Webb County</p> <p>6 elections administrator asked that there be evening hours</p> <p>7 for the mobile stations; is that correct?</p> <p>8 A. That's right.</p> <p>9 Q. And your understanding is that DPS opposed</p> <p>10 evening hours at that time, right?</p> <p>11 A. That's right.</p> <p>12 Q. But it appears from the e-mail -- and feel free</p> <p>13 to correct me -- that the Secretary of State's Office</p> <p>14 requested the change from 9:00 a.m. to 4:00 p.m.</p> <p>15 A. I was the point of contact for the counties, so</p> <p>16 when DPS got the proposed locations from Webb County,</p> <p>17 they got the proposed hours from Webb County, they did</p> <p>18 not want to accommodate those locations at those hours</p> <p>19 and they asked Wroe to ask me to ask the county to modify</p> <p>20 the hours with one day available for off-business hours,</p> <p>21 and that's the request that I made to Oscar.</p> <p>22 Q. Did the Secretary of State's Office play any</p> <p>23 role in determining when mobile stations were open, the</p> <p>24 hours they were open for?</p> <p>25 A. I don't know how to answer that question. We</p>	<p style="text-align: right;">327</p> <p>1 Q. Okay. Isn't that what the e-mail says, that</p> <p>2 you thought business hours were better?</p> <p>3 A. I'm using -- I'm using we in the sense to</p> <p>4 encompass us and DPS. Since DPS is manning the stations,</p> <p>5 this is DPS' request.</p> <p>6 Q. So is it your testimony that you were merely</p> <p>7 conveying DPS' request for limited hours?</p> <p>8 A. That's right.</p> <p>9 Q. Okay.</p> <p>10 A. But I didn't want -- whenever you're doing</p> <p>11 something like this -- I don't know if you've got kids,</p> <p>12 but human beings are human beings, and if they sense any</p> <p>13 daylight between participants in a program they will</p> <p>14 exploit that, so there's -- there's no benefit to</p> <p>15 Joyce Cowan understanding that DPS and I didn't really</p> <p>16 agree on the hours, so I'm going to tell her we think,</p> <p>17 because I'm saying we who are doing this program, have</p> <p>18 agreed upon business hours being better.</p> <p>19 Q. Okay. What recourse would the Secretary of</p> <p>20 State's Office have with -- in an instance where there</p> <p>21 was a strong disagreement between the Department of</p> <p>22 Public Safety and your office about the hours of a mobile</p> <p>23 station?</p> <p>24 A. If -- if there was a disagreement and it was</p> <p>25 incapable of being resolved, I don't know.</p>
<p style="text-align: right;">326</p> <p>1 wanted as much availability as possible. DPS was</p> <p>2 responsible for manning the stations, and there were</p> <p>3 building constraints for some buildings, so operating in</p> <p>4 an environment where another agency is supplying the</p> <p>5 personnel and county or city agencies are running the</p> <p>6 building, to the extent we had any control over the</p> <p>7 process, which was very little, we wanted as many hours</p> <p>8 as possible.</p> <p>9 (Exhibit No. 34 marked)</p> <p>10 Q. Okay. So I'm going to show you what is marked</p> <p>11 as Exhibit 34. Can you read the second e-mail message</p> <p>12 from the top there?</p> <p>13 A. Right.</p> <p>14 Q. And who is that e-mail message from?</p> <p>15 A. That is me to the Hays County elections</p> <p>16 administrator.</p> <p>17 Q. And what does the e-mail say?</p> <p>18 A. Says: Excellent. The times are basically up</p> <p>19 to you. We think business hours are better -- is</p> <p>20 better -- or we think during business hours is better. A</p> <p>21 table for the computer printer and a place to plug in for</p> <p>22 electricity.</p> <p>23 Q. Okay. So why -- why did you think that</p> <p>24 business hours were better?</p> <p>25 A. I didn't.</p>	<p style="text-align: right;">328</p> <p>1 Q. Does the MOU say anything about it?</p> <p>2 A. It does not. And, you know, sometimes when --</p> <p>3 well, no, it doesn't.</p> <p>4 Q. Okay. Exhibit 34 was Bates range 462497 to</p> <p>5 462499.</p> <p>6 A. That's Exhibit 33.</p> <p>7 Q. Excuse me. Exhibit 33. And Exhibit 34 was</p> <p>8 Bates range 462079 to 4620 -- well, they're all 462079.</p> <p>9 My apologies.</p> <p>10 MR. ROSS: Strike that.</p> <p>11 Q. To your knowledge has a mobile station visited</p> <p>12 every county in Texas?</p> <p>13 A. I don't know. I doubt it.</p> <p>14 Q. Do you know why it wouldn't have visited every</p> <p>15 county in Texas?</p> <p>16 A. I guess because we haven't had time to yet.</p> <p>17 Q. Okay. Do you know which counties have not been</p> <p>18 visited?</p> <p>19 A. I do not.</p> <p>20 Q. Do you know why particular counties might not</p> <p>21 have been visited other than not getting around to it?</p> <p>22 A. You've got 25 units, you've got 254 counties,</p> <p>23 and you've got a limited amount of time.</p> <p>24 Q. Okay. Do you know if there are any plans to</p> <p>25 send mobile stations to counties that have not received</p>

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<p style="text-align: right;">329</p> <p>1 one in the past?</p> <p>2 <b>A. I don't know if that's a particular part of the</b></p> <p>3 <b>consideration. I don't think it is.</b></p> <p>4 Q. You don't know if it's a particular</p> <p>5 consideration whether or not a county has already been</p> <p>6 visited?</p> <p>7 <b>A. That's right.</b></p> <p>8 Q. Okay. In those counties that have not been</p> <p>9 visited by a mobile station does your office know how far</p> <p>10 the average person has to go to reach a mobile station?</p> <p>11 MR. KEISTER: Objection, vague.</p> <p>12 <b>A. Yeah, I -- I don't think the metric should be</b></p> <p>13 <b>how far someone has to drive to get to a mobile station.</b></p> <p>14 <b>I think the metric should be how far does somebody have</b></p> <p>15 <b>to drive to get to a driver license office or other</b></p> <p>16 <b>available place for an election identification</b></p> <p>17 <b>certificate.</b></p> <p>18 Q. Well, based on that metric, has the Secretary</p> <p>19 of State's Office conducted any studies to determine how</p> <p>20 far people have to go in order to reach mobile -- or</p> <p>21 excuse me -- DPS offices?</p> <p>22 <b>A. I have received information from the DPS</b></p> <p>23 <b>indicating areas of the state that are more than 50 miles</b></p> <p>24 <b>away from a driver license office and I have received</b></p> <p>25 <b>information from the DPS about places in the state that</b></p>	<p style="text-align: right;">331</p> <p>1 the no-match list you're aware of particular ZIP codes</p> <p>2 that have high rates of individuals with no match that</p> <p>3 appear on that list, right?</p> <p>4 <b>A. That's right.</b></p> <p>5 Q. Okay. Are you aware of the racial demographics</p> <p>6 of those ZIP codes?</p> <p>7 <b>A. No.</b></p> <p>8 <b>(Exhibit No. 35 marked)</b></p> <p>9 Q. Okay. I'm going to introduce one more exhibit.</p> <p>10 It's number 35 and the Bates number is 461925.</p> <p>11 Mr. Ingram, are you familiar with this document at all?</p> <p>12 <b>A. I think that Janie might have sent this to me.</b></p> <p>13 Q. Okay. What is it?</p> <p>14 <b>A. This is a notice for Val Verde County for where</b></p> <p>15 <b>EIC mobile units would be available for the public.</b></p> <p>16 Q. Who is Janie?</p> <p>17 <b>A. Janie Ramon is the -- I believe she's the</b></p> <p>18 <b>county clerk in Val Verde County.</b></p> <p>19 Q. So was this created -- this was created by</p> <p>20 Val Verde or who created this document?</p> <p>21 <b>A. I believe that -- that this is a Val Verde</b></p> <p>22 <b>County created document.</b></p> <p>23 Q. Do you know if the Secretary of State's Office</p> <p>24 played any role in creating it?</p> <p>25 <b>A. We might have. This might be based on a form</b></p>
<p style="text-align: right;">330</p> <p>1 are more than 100 miles away from a DPS office.</p> <p>2 Q. And is that information taken into</p> <p>3 consideration in deciding where to locate a mobile</p> <p>4 station?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Has that -- did that come in the form of a</p> <p>7 report or data set or --</p> <p>8 <b>A. You're talking about the information about how</b></p> <p>9 <b>far people have to drive?</b></p> <p>10 Q. The information about how far, yes.</p> <p>11 <b>A. It was a -- it was visual demonstration with</b></p> <p>12 <b>colored places being within 50 miles of a -- of a driver</b></p> <p>13 <b>license office and white portions not being within</b></p> <p>14 <b>50 miles.</b></p> <p>15 Q. Okay. Do you know if that information has been</p> <p>16 produced to the plaintiffs?</p> <p>17 <b>A. I have no idea.</b></p> <p>18 Q. Okay. In general do you know the racial</p> <p>19 demographics of the counties that have been visited by</p> <p>20 a mobile station?</p> <p>21 <b>A. No.</b></p> <p>22 Q. Do you know the demographics of the counties</p> <p>23 that have not been visited by a mobile station?</p> <p>24 <b>A. No.</b></p> <p>25 Q. The racial demographics. So you're -- based on</p>	<p style="text-align: right;">332</p> <p>1 <b>that we gave counties to use. I don't know.</b></p> <p>2 Q. Okay. Did the Secretary of State's Office have</p> <p>3 a role in deciding to locate a mobile station in</p> <p>4 Val Verde County?</p> <p>5 <b>A. Sure.</b></p> <p>6 Q. To your knowledge how was that decision made?</p> <p>7 <b>A. This would have been in the rural voters</b></p> <p>8 <b>component. We were trying to -- most of the places that</b></p> <p>9 <b>were far away from a driver license office were in the</b></p> <p>10 <b>Rio Grande Valley. I don't know if you've ever been to</b></p> <p>11 <b>Val Verde County, but it's very large, and we wanted to</b></p> <p>12 <b>make sure that counties like that had an opportunity to</b></p> <p>13 <b>have election identification certificate mobile units.</b></p> <p>14 Q. Do you know the racial demographics of that</p> <p>15 county?</p> <p>16 <b>A. I do not.</b></p> <p>17 Q. Okay. On which dates does this press release</p> <p>18 indicate that the mobile stations would be in Val Verde</p> <p>19 County?</p> <p>20 <b>A. Thursday, October 31st and Friday,</b></p> <p>21 <b>November 1st.</b></p> <p>22 Q. Do you know how those dates were selected?</p> <p>23 <b>A. I don't. It was -- we were working our way</b></p> <p>24 <b>down from El Paso, and that's where we happened to be</b></p> <p>25 <b>those two days.</b></p>



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<p style="text-align: right;">333</p> <p>1 Q. Do you know whether there were discussions</p> <p>2 about operating the Val Verde County mobile station</p> <p>3 during a weekend?</p> <p>4 A. I'm -- I don't believe there were any such</p> <p>5 discussions, no, sir.</p> <p>6 Q. I guess, in general, for how many days a week</p> <p>7 is a mobile station open at one location?</p> <p>8 A. We usually had the mobile stations in a general</p> <p>9 vicinity for two days, and usually the county liked to</p> <p>10 move it from one place to another on each day. Sometimes</p> <p>11 the county would want it to be at the same location both</p> <p>12 days.</p> <p>13 Q. Why two days?</p> <p>14 A. That's just what we put into the schedule.</p> <p>15 Q. So there were no discussions about having a</p> <p>16 mobile station in a location for more than two days?</p> <p>17 A. Sure there was.</p> <p>18 Q. What sorts of discussions were there?</p> <p>19 A. As I mentioned, Harris County had a couple of</p> <p>20 locations that were almost continuous throughout this</p> <p>21 period. Harris County also has 2.8 million registered</p> <p>22 voters.</p> <p>23 Q. So what went into consideration for deciding</p> <p>24 whether or not to open a mobile station for more than two</p> <p>25 days?</p>	<p style="text-align: right;">335</p> <p>1 stations that DPS operated in those counties were in</p> <p>2 place for five days, not two.</p> <p>3 Q. And those are the Phase 3 mobile stations?</p> <p>4 A. That's right.</p> <p>5 Q. Okay. Was it the Secretary of State's opinion</p> <p>6 that the rural -- the rural voters in Val Verde County</p> <p>7 would be able to easily access the mobile station there</p> <p>8 on weekdays between 9:00 a.m. and 4:00 p.m.?</p> <p>9 A. Secretary of State's Office didn't have an</p> <p>10 opinion in that regard. We did make it available for</p> <p>11 folks.</p> <p>12 Q. Do you know if efforts were made to advertise</p> <p>13 the presence of mobile stations in Val Verde County?</p> <p>14 A. I'm not sure what Janie did locally. I know</p> <p>15 that we would have issued a press release, and I don't</p> <p>16 know what else she did.</p> <p>17 Q. Do you know --</p> <p>18 A. I know that she was pretty excited about them</p> <p>19 coming.</p> <p>20 Q. Do you know what efforts the Secretary of</p> <p>21 State's Office in general does to advertise the location</p> <p>22 of a mobile station?</p> <p>23 A. We will prepare materials that we release</p> <p>24 directly to the media and we'll also prepare materials</p> <p>25 for the county to use in their interactions with the</p>
<p style="text-align: right;">334</p> <p>1 A. How many voters could be helped by it.</p> <p>2 Q. Okay. To your knowledge are mobile stations</p> <p>3 ever operated on weekends?</p> <p>4 A. I don't know if they have been for the spring</p> <p>5 or not. Since we've gone to more of an event-driven</p> <p>6 invitation model the likelihood is pretty high that we're</p> <p>7 going to have some weekend EIC units.</p> <p>8 Q. But you don't know if that's happened in the</p> <p>9 past?</p> <p>10 A. I'm not sure if it's actually happened yet this</p> <p>11 year or not. I know it didn't happen last fall.</p> <p>12 Q. You know it did not happen last fall?</p> <p>13 A. It could have. Now, I don't want to speak</p> <p>14 about Phase 3. There were DPS-operated mobile EIC units</p> <p>15 in those counties that don't have a driver license</p> <p>16 office, and they might have had some on weekends in those</p> <p>17 counties. I wasn't directly involved in scheduling</p> <p>18 those, so I don't know.</p> <p>19 Q. Okay. Do you know what counties those might</p> <p>20 have been that had Saturday mobile stations?</p> <p>21 A. No. It would have been one of the 79 that</p> <p>22 didn't get the training and the equipment to issue EICs</p> <p>23 themselves and didn't have a driver license office.</p> <p>24 Q. Okay. Going back --</p> <p>25 A. And also, just to clarify, those mobile</p>	<p style="text-align: right;">336</p> <p>1 media.</p> <p>2 Q. Is there a budget for advertising mobile</p> <p>3 stations?</p> <p>4 A. In 2013, no. We do have part of our money</p> <p>5 reserved this year for EIC unit program.</p> <p>6 Q. How much money is that for 2014?</p> <p>7 A. It's not -- it's, you know, however much we</p> <p>8 need, but we've tried to save back a portion of our</p> <p>9 \$2 million.</p> <p>10 Q. Do you know what amount that is, about what</p> <p>11 amount that is?</p> <p>12 A. I don't. 300,000 or 400,000.</p> <p>13 Q. Okay. How is that money used, that \$300,000</p> <p>14 or \$400,000?</p> <p>15 A. It hasn't been used.</p> <p>16 Q. Oh, it hasn't been used at all?</p> <p>17 A. That's right.</p> <p>18 Q. Okay. Are there plans to use it specifically?</p> <p>19 A. If needed, sure.</p> <p>20 Q. Do you -- what kinds of plans in general?</p> <p>21 A. Well, if we decide that we need to have an</p> <p>22 extra budget for mobile EIC units, then it would be for</p> <p>23 everything associated with them, banners, signage,</p> <p>24 travel, employee expense. It would be everything</p> <p>25 associated with the program.</p>

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<p style="text-align: right;">337</p> <p>1 Q. Okay. So the money that you mentioned for --</p> <p>2 that's budgeted for 2014 is for the mobile stations in</p> <p>3 general, not for advertising them specifically?</p> <p>4 A. Right.</p> <p>5 Q. Okay. And -- and you mentioned that the</p> <p>6 Secretary of State's Office has model press releases for</p> <p>7 the mobile locations.</p> <p>8 A. Right.</p> <p>9 Q. Yeah. Does the Secretary of State's Office</p> <p>10 sign off on ads before -- like the Val Verde one before</p> <p>11 they're sent out by the counties?</p> <p>12 A. Not usually, no, sir.</p> <p>13 Q. Does the Secretary of State's Office have</p> <p>14 guidelines for effective advertising of mobile stations?</p> <p>15 A. No.</p> <p>16 Q. Okay. Do you know if DPS has a budget for</p> <p>17 advertising mobile stations?</p> <p>18 A. I do not know.</p> <p>19 Q. Do you know if any other agency does?</p> <p>20 A. I do not.</p> <p>21 Q. Okay. Well, you mentioned the Secretary of</p> <p>22 State's efforts to reach out to particular groups through</p> <p>23 the media about the SB 14 voter ID requirement.</p> <p>24 A. Right.</p> <p>25 Q. Do you know if similar efforts to reach</p>	<p style="text-align: right;">339</p> <p>1 purpose is not to get EIC applications, right? That's</p> <p>2 the hope for a benefit, but that's not the point. The</p> <p>3 point is to make sure that people have the opportunity to</p> <p>4 get an election identification certificate in close</p> <p>5 proximity to them if they need it. We want to make the</p> <p>6 opportunity available, so metrics on making the</p> <p>7 opportunity available are a little more amorphous than</p> <p>8 actual persons who have taken us up on the opportunity.</p> <p>9 Q. Okay. Let me ask you a couple of questions</p> <p>10 about Phase 3 mobile units. You previously testified</p> <p>11 that about 40 counties are participating in Phase 3?</p> <p>12 A. No, what I testified to is that there were 40</p> <p>13 counties involved last I heard. I believe there's more</p> <p>14 than that now.</p> <p>15 Q. Okay. And according to your testimony, the</p> <p>16 decision to locate mobile units in a particular county</p> <p>17 was based in part on whether a DPS office was in that</p> <p>18 county?</p> <p>19 A. You talking about for Phase 3?</p> <p>20 Q. Phase 3, yes.</p> <p>21 A. For Phase 3 all of those counties were targeted</p> <p>22 for mobile EIC units.</p> <p>23 Q. All of which counties?</p> <p>24 A. All of the 79 counties that don't have a driver</p> <p>25 license office.</p>
<p style="text-align: right;">338</p> <p>1 particular groups, minorities in particular, were made</p> <p>2 as --</p> <p>3 MR. ROSS: Well, strike that question.</p> <p>4 Q. Do you know if the Secretary of State's Office</p> <p>5 made a particular effort to advertise to minorities the</p> <p>6 presence of mobile stations in a location?</p> <p>7 A. The Secretary of State's Office didn't make</p> <p>8 advertising efforts with regard to mobile EIC units.</p> <p>9 Q. Okay. To your knowledge how many people were</p> <p>10 issued EICs by the mobile stations in Val Verde County on</p> <p>11 October 31st and November 1st of 2013?</p> <p>12 A. I do not know.</p> <p>13 Q. Do you have an estimate of how many people?</p> <p>14 A. I do not.</p> <p>15 Q. It was your earlier testimony that the</p> <p>16 Secretary of State's Office plans to evaluate the</p> <p>17 effectiveness of the mobile unit program after the 2014</p> <p>18 November elections?</p> <p>19 A. If we're going to do some sort of comprehensive</p> <p>20 evaluation, that's when it will occur.</p> <p>21 Q. Do you know how the Secretary of State's Office</p> <p>22 might measure the effectiveness of the mobile stations</p> <p>23 program?</p> <p>24 A. Well, I don't -- that's -- that's a difficult</p> <p>25 question because the effectiveness of it -- the -- the</p>	<p style="text-align: right;">340</p> <p>1 Q. Okay. Did your office take any other factors</p> <p>2 into consideration when deciding whether to place a</p> <p>3 Phase 3 mobile station in a particular county?</p> <p>4 A. The Phase 3 program is not ours. We were just</p> <p>5 a point of contact for the counties for DPS.</p> <p>6 Q. Okay. So the Secretary of State's Office --</p> <p>7 well, what role did the Secretary of State's Office play</p> <p>8 in determining the location of a mobile station in</p> <p>9 Phase 3?</p> <p>10 A. None.</p> <p>11 Q. None. Okay.</p> <p>12 MR. ROSS: Can we take a really quick</p> <p>13 break off the record?</p> <p>14 (Off the record 5:44 p.m. to 5:45 p.m.)</p> <p>15 BY MR. ROSS:</p> <p>16 Q. Are you familiar with roughly how many DPS</p> <p>17 offices there are in Texas?</p> <p>18 A. I -- I -- I don't know.</p> <p>19 Q. Okay. Do you have a sense of where the DPS</p> <p>20 offices are located in Texas?</p> <p>21 A. No.</p> <p>22 Q. Not even based on your work on the mobile</p> <p>23 units?</p> <p>24 A. No. What I know is the coverage area of a</p> <p>25 particular -- of the DPS offices, but I don't remember on</p>

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<p style="text-align: right;">341</p> <p>1 that map there being a point where the DPS office</p> <p>2 actually is. It was just a shading for counties that</p> <p>3 were within a 50-mile radius and a 100-mile radius of an</p> <p>4 office, but I don't think it showed the offices. It</p> <p>5 might have, but I don't think so. It's not something</p> <p>6 that I would have keyed on at all.</p> <p>7 Q. Let's go back to one quick question. So you</p> <p>8 mentioned that MOU, Exhibit 4, that it may have been</p> <p>9 updated from two to five days notice for DPS and the</p> <p>10 Secretary of State's Office on the location of a mobile</p> <p>11 station?</p> <p>12 A. I think what I said is that we've agreed to</p> <p>13 extend that to five days. Whether or not it's been</p> <p>14 formalized or not, I don't think it has.</p> <p>15 Q. Formalized -- by formalized you mean whether</p> <p>16 it's in writing somewhere?</p> <p>17 A. That's right. I mean, I'm sure -- well, I</p> <p>18 don't know. I mean, I saw Louri's e-mail from earlier</p> <p>19 mentioning the five-day requirement and I know the</p> <p>20 five-day requirement has been agreed to by our respective</p> <p>21 offices.</p> <p>22 Q. Okay. If it was memorialized in writing do you</p> <p>23 know if it would have been produced?</p> <p>24 A. I don't.</p> <p>25 Q. Okay. If it were not memorialized in writing</p>	<p style="text-align: right;">343</p> <p>1 MS. KORGAONKAR: Okay. That's all.</p> <p>2 MR. ROSENBERG: Let's take a short break,</p> <p>3 and then we can come back for any type of follow-ups.</p> <p>4 (Recess from 5:47 p.m. to 5:55 p.m.)</p> <p>5 FURTHER EXAMINATION</p> <p>6 BY MR. ROSENBERG:</p> <p>7 Q. We're going to try to do this as expeditiously</p> <p>8 as possible, Mr. Ingram. Just before the end of the</p> <p>9 questions you were talking about the metric that you</p> <p>10 would use for evaluating the success of the mobile -- or</p> <p>11 of the EIC program, and could you again please tell me</p> <p>12 what you -- what metric you referenced?</p> <p>13 A. Sure. It would be easy to say that the program</p> <p>14 is a success or failure based upon the number of EIC</p> <p>15 units that are issued for mobile units, but I don't think</p> <p>16 that that's the best measure of whether or not the</p> <p>17 program was a success or needs to be repeated. The</p> <p>18 metric that I would advocate for is how widely available</p> <p>19 were the EICs made, and the idea being that we would want</p> <p>20 to make sure that populations of voters and voters who</p> <p>21 don't live in population centers both had access to an</p> <p>22 election identification certificate if they needed one.</p> <p>23 Q. And how would you judge how widely available</p> <p>24 EICs were made?</p> <p>25 A. See, that's what I mean. That's a much more</p>
<p style="text-align: right;">342</p> <p>1 could it be changed based on an understanding between the</p> <p>2 Secretary of State's Office and DPS, be changed back to a</p> <p>3 two-day requirement?</p> <p>4 A. If it were changed it would be to make it</p> <p>5 longer, not to make it shorter.</p> <p>6 MR. ROSS: Okay.</p> <p>7 EXAMINATION</p> <p>8 BY MS. KORGAONKAR:</p> <p>9 Q. I just have one very quick question -- I</p> <p>10 understand it's late in the day -- about the July 2013</p> <p>11 match that gave you ZIP codes where there's the highest</p> <p>12 concentration of people who didn't match who may not have</p> <p>13 an ID.</p> <p>14 A. Right.</p> <p>15 Q. Was there any effort made by the Secretary of</p> <p>16 State's Office to learn anything about those populations</p> <p>17 within those ZIP codes?</p> <p>18 A. No.</p> <p>19 Q. There was no inquiry into, for example, whether</p> <p>20 those people worked within those ZIP codes?</p> <p>21 A. No.</p> <p>22 Q. Or the hours that those people were likely,</p> <p>23 based on perhaps census data, to have been within those</p> <p>24 ZIP codes during a weekday?</p> <p>25 A. No, ma'am.</p>	<p style="text-align: right;">344</p> <p>1 amorphous metric and that's a very difficult thing to</p> <p>2 evaluate.</p> <p>3 Q. Have you given some thought to that?</p> <p>4 A. No.</p> <p>5 Q. Have you considered what factors you might take</p> <p>6 into consideration?</p> <p>7 A. No.</p> <p>8 Q. Did the state have a contract with any vendor</p> <p>9 or marketing agency to provide a statewide voter</p> <p>10 education program from June 25, 2013, to the end of 2013?</p> <p>11 A. We had a statewide voter education campaign</p> <p>12 that was in place toward the end of the year, but not</p> <p>13 from June 25th on.</p> <p>14 Q. Do you know when in 2013 it began?</p> <p>15 A. I believe it was in September.</p> <p>16 Q. Was that pursuant to an RFP?</p> <p>17 A. It was not.</p> <p>18 Q. Who was the vendor?</p> <p>19 A. We did an emergency procurement with TKO since</p> <p>20 they were involved in our voter education campaign in</p> <p>21 2012 and were familiar with the requirements of that RFP,</p> <p>22 which included voter ID education.</p> <p>23 Q. How much did it cost?</p> <p>24 A. We allocated 400,000 to the -- to the effort.</p> <p>25 Q. And do you know what it covered?</p>

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<p style="text-align: right;">345</p> <p>1 <b>A. As much as we could cover for 400,000. It</b>  2 <b>covered -- it covered --</b>  3 <b>Q. You and I would spend it quite differently.</b>  4 <b>A. Yeah, exactly. It covered paid media,</b>  5 <b>advertising on cable TV and newspapers and radio, and it</b>  6 <b>also covered visits by the secretary -- at that time it</b>  7 <b>was Secretary of State Steen -- to election officials</b>  8 <b>across the state to gather earned media.</b>  9 <b>Q. And was TKO responsible for placing the ads on</b>  10 <b>radio and television, newspaper, all of that?</b>  11 <b>A. They were.</b>  12 <b>Q. On the Burson Marsteller contract, was that</b>  13 <b>pursuant to a public bid?</b>  14 <b>A. It was.</b>  15 <b>Q. And have those bidding materials been produced</b>  16 <b>in connection with this litigation; do you know?</b>  17 <b>A. I don't know.</b>  18 <b>Q. What was the budget for that?</b>  19 <b>A. Two million.</b>  20 <b>Q. And there was a contract, I assume?</b>  21 <b>A. Yes.</b>  22 <b>Q. And do you know if that's been produced?</b>  23 <b>A. I don't. I believe the contract is for</b>  24 <b>1.675 million.</b>  25 <b>Q. And the 2 million comes from -- or the</b></p>	<p style="text-align: right;">347</p> <p>1 <b>A. I'm not sure exactly how to answer that</b>  2 <b>question. They -- they were -- I don't want to violate</b>  3 <b>my attorney's instruction.</b>  4 <b>Q. Well, let's see if we can parse it just a bit.</b>  5 <b>I think your attorney -- well, which part of your</b>  6 <b>attorney's instruction are you concerned about violating?</b>  7 <b>A. Deliberative privilege and attorney-client</b>  8 <b>privilege.</b>  9 <b>Q. What attorney was involved in -- what attorney</b>  10 <b>communications are involved in your answer? When I say</b>  11 <b>what attorney, I mean the identity of the attorney.</b>  12 <b>MR. KEISTER: Don't answer that question.</b>  13 <b>MR. ROSENBERG: Then how can we tell</b>  14 <b>whether the attorney-client privilege applies?</b>  15 <b>MR. KEISTER: Well, it's the</b>  16 <b>attorney-client privilege because the attorney-client --</b>  17 <b>the attorneys were involved in it, and we're not going to</b>  18 <b>get into those discussions and argue and -- I mean, you</b>  19 <b>can ask him anything that has to do with the -- you know,</b>  20 <b>with the ultimate decisions or work that the governor put</b>  21 <b>into it, but going into the deliberations behind it and</b>  22 <b>any possible attorney-client communications, who, when,</b>  23 <b>what, and where, I'm going to instruct him not to answer.</b>  24 <b>MR. ROSENBERG: And the only reason I'm</b>  25 <b>just a little puzzled is because my questions have to do</b></p>
<p style="text-align: right;">346</p> <p>1 <b>difference between the 2 million and 1.675 comes from?</b>  2 <b>A. The money that we've held back if we need it</b>  3 <b>for EIC mobile unit program.</b>  4 <b>Q. What, to your knowledge, has been the</b>  5 <b>participation of anyone in the Governor's Office in the</b>  6 <b>implementation of SB 14?</b>  7 <b>A. I don't know what all the governor has done</b>  8 <b>with regard to the implementation of SB 14. The</b>  9 <b>Governor's Office and MacGregor Stephenson has worked</b>  10 <b>with us on mobile EIC units. We've talked to, you know,</b>  11 <b>people in the Governor's Office about implementation of</b>  12 <b>the voter ID list to make sure that we were communicating</b>  13 <b>with all the stakeholders about the list of acceptable</b>  14 <b>IDs as we interpreted it.</b>  15 <b>Q. Anything else?</b>  16 <b>A. I don't -- I can't think of anything else off</b>  17 <b>the top of my head.</b>  18 <b>Q. What was the specific participation of the</b>  19 <b>Governor's Office in connection with the mobile EIC</b>  20 <b>units? What was -- what recommendations did it make?</b>  21 <b>MR. KEISTER: To the extent that that</b>  22 <b>involves any attorney-client communications or</b>  23 <b>deliberative process communications, I'm going to</b>  24 <b>instruct you not to answer, but if you can give him</b>  25 <b>the --</b></p>	<p style="text-align: right;">348</p> <p>1 <b>with communications between the Governor's Office and --</b>  2 <b>MR. KEISTER: The Governor's Office is a</b>  3 <b>defendant in this case as is the Secretary of State and</b>  4 <b>as is DPS.</b>  5 <b>MR. ROSENBERG: Well, then let me back up</b>  6 <b>and ask these questions.</b>  7 <b>BY MR. ROSENBERG:</b>  8 <b>Q. Have you had any communications with anyone</b>  9 <b>from the Governor's Office concerning the implementation</b>  10 <b>of SB 14?</b>  11 <b>A. Yes.</b>  12 <b>Q. With whom did you have such communications?</b>  13 <b>A. I've talked to MacGregor Stephenson and I've</b>  14 <b>talked to Cathy Walt. I don't know if I've talked to</b>  15 <b>anybody else.</b>  16 <b>Q. And what subject areas did you discuss with</b>  17 <b>MacGregor Stephenson concerning the implementation of</b>  18 <b>SB 14?</b>  19 <b>MR. KEISTER: Without going into the</b>  20 <b>details. You can tell the subject matters, but not the</b>  21 <b>underlying conversations.</b>  22 <b>A. The subject matters that I've spoken to the</b>  23 <b>Governor's Office about were our interpretation of the</b>  24 <b>list of photo IDs and mobile EIC unit program.</b>  25 <b>Q. And when you say your interpretation of the</b></p>

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<p style="text-align: right;">349</p> <p>1 list of photo IDs, what do you mean by your</p> <p>2 interpretation of the list?</p> <p>3 <b>A. The information that I went through with</b></p> <p>4 <b>Ms. Westfall about the specific forms that we believe a</b></p> <p>5 <b>military ID takes, the specific forms that a certificate</b></p> <p>6 <b>of citizenship takes, that sort of thing.</b></p> <p>7 Q. And did the Governor's Office provide its</p> <p>8 opinion on any of those issues?</p> <p>9 <b>A. They agreed with our interpretation.</b></p> <p>10 Q. Now, the second area that you said you</p> <p>11 discussed was the mobile EIC units. With whom did you</p> <p>12 have discussions concerning mobile EIC units?</p> <p>13 <b>A. MacGregor Stephenson and Cathy Walt in the</b></p> <p>14 <b>Governor's Office, if that's what we're talking about.</b></p> <p>15 Q. And which issues relating to the mobile EIC</p> <p>16 units did you discuss?</p> <p>17 <b>A. We -- we discussed with them whether to do the</b></p> <p>18 <b>program or not.</b></p> <p>19 Q. Did the Governor's Office provide its opinion</p> <p>20 and recommendation to you on that issue?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. And what was it?</p> <p>23 MR. KEISTER: Once again, in terms of any</p> <p>24 communications that are deliberative, I'm going to</p> <p>25 instruct you not to answer based on deliberative process.</p>	<p style="text-align: right;">351</p> <p>1 discussions?</p> <p>2 <b>A. I think that our -- our discussions with the</b></p> <p>3 <b>Governor's Office regarding the implementation of photo</b></p> <p>4 <b>ID centered around the interpretation of the secretary's</b></p> <p>5 <b>office about the list of acceptable IDs and the mobile</b></p> <p>6 <b>EIC unit program.</b></p> <p>7 Q. So other than those two issues, as far as</p> <p>8 you're aware no one in your office had discussions with</p> <p>9 anyone in the Governor's Office concerning the</p> <p>10 implementation of SB 14?</p> <p>11 <b>A. We could have. I'm not sure about this, but</b></p> <p>12 <b>our office could have communicated with the Governor's</b></p> <p>13 <b>Office about voter education in the fall of 2013 and</b></p> <p>14 <b>funds to pay for that effort.</b></p> <p>15 Q. And when you say you could have, you mean you</p> <p>16 think you might have or you --</p> <p>17 <b>A. I don't know if that was the case or not. If</b></p> <p>18 <b>it was, it would have been communication with</b></p> <p>19 <b>Mike Morrissey in the Governor's Office.</b></p> <p>20 Q. And who would have had that communication?</p> <p>21 <b>A. Mr. Jackson and Mr. Shorter.</b></p> <p>22 Q. One last question I have -- I don't know if</p> <p>23 anyone else has any follow-up. In your -- in your view,</p> <p>24 in the construction of SB 14, the education program that</p> <p>25 is mandated by the statute, does it specifically mandate</p>
<p style="text-align: right;">350</p> <p>1 He can give you the ultimate implementation decision, you</p> <p>2 know, but in terms of giving the discussions I'm going to</p> <p>3 instruct him not to answer.</p> <p>4 <b>A. They strongly supported the effort.</b></p> <p>5 Q. Did you have discussions with anyone in the</p> <p>6 Governor's Office concerning any locations of the mobile</p> <p>7 EIC units?</p> <p>8 <b>A. I don't believe so.</b></p> <p>9 Q. Do you know if anyone in your office did?</p> <p>10 <b>A. I don't believe so.</b></p> <p>11 Q. Do you know if anyone in your office other than</p> <p>12 yourself had discussions with anyone in the Governor's</p> <p>13 Office concerning implementation of SB 14?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. And who was that?</p> <p>16 <b>A. Our general counsel, Wroe Jackson, and our</b></p> <p>17 <b>deputy secretary of state, Coby Shorter, as well as</b></p> <p>18 <b>Secretary Steen.</b></p> <p>19 Q. And were you privy to those discussions?</p> <p>20 <b>A. I was privy to the ones that I was privy to.</b></p> <p>21 <b>I don't know if I was privy to all of them.</b></p> <p>22 Q. Were you aware of what the subject matters are</p> <p>23 of the discussions where you were not privy?</p> <p>24 <b>A. I don't know what I don't know.</b></p> <p>25 Q. Meaning did they tell you after the</p>	<p style="text-align: right;">352</p> <p>1 that you focus on photo ID in terms of the education or</p> <p>2 voter -- voter -- voter ID generally with photo ID kind</p> <p>3 of folded into it?</p> <p>4 <b>A. I don't know.</b></p> <p>5 Q. Or something else?</p> <p>6 <b>A. No, I'd have to -- I'd have to read the bill to</b></p> <p>7 <b>see what it says. But the -- the bill set aside a</b></p> <p>8 <b>particular pot of money, and that is money from the</b></p> <p>9 <b>federal government under the Help America Vote Act. In</b></p> <p>10 <b>setting aside that particular pot of money it comes with</b></p> <p>11 <b>its built-in set of constraints, and so regardless of</b></p> <p>12 <b>what the legislature said and the words that they used</b></p> <p>13 <b>with regard to that \$2 million, it can't overcome the</b></p> <p>14 <b>regulations associated with spending federal money on a</b></p> <p>15 <b>voter education program, so we have endeavored in our</b></p> <p>16 <b>office in putting this program together to have a program</b></p> <p>17 <b>that very much emphasizes voter ID education as directed</b></p> <p>18 <b>by the legislature while accommodating the requirements</b></p> <p>19 <b>on the use of the money by the federal government.</b></p> <p>20 MR. ROSENBERG: I'll pass to whomever else</p> <p>21 wants to ask a question or two.</p> <p>22 FURTHER EXAMINATION</p> <p>23 BY MR. BARON:</p> <p>24 Q. Keith, just on that same topic -- I'll just</p> <p>25 speak loud. So the 1.675 million on the</p>



IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

MARC VEASEY, JANE HAMILTON,	)	
SERGIO DELEON, FLOYD J. CARRIER,	)	
ANNA BURNS, MICHAEL MONTEZ,	)	
PENNY POPE, OSCAR ORTIZ, KOBY	)	
OZIAS, JOHN MELLOR-CRUMLEY, PEGGY	)	
HERMAN, EVELYN BRICKNER, GORDON	)	
BENJAMIN, KEN GANDY, LEAGUE OF	)	
UNITED LATIN AMERICAN CITIZENS	)	
(LULAC), AND DALLAS COUNTY,	)	
TEXAS,	)	CIVIL ACTION
Plaintiffs,	)	NO.
	)	2:13-CV-193
v.	)	(NGR)
	)	[Lead case]
RICK PERRY, Governor of Texas;	)	
and JOHN STEEN, Texas Secretary	)	
of State,	)	
Defendants.	)	
_____	)	
	)	
UNITED STATES OF AMERICA,	)	
Plaintiffs,	)	
	)	
TEXAS LEAGUE OF YOUNG VOTERS	)	
EDUCATION FUND, IMANI CLARK, AND	)	
MICHELLE BESSIAKE,	)	
Plaintiff-Intervenors,	)	
	)	
TEXAS ASSOCIATION OF HISPANIC	)	
COUNTY JUDGES AND COUNTY	)	
COMMISSIONERS, HIDALGO COUNTY,	)	
AND MARIA LONGORIA BENAVIDES,	)	CIVIL ACTION
Plaintiff-Intervenors,	)	NO.
	)	2:13-CV-263
v.	)	(NGR)
	)	Consolidated
STATE OF TEXAS, JOHN STEEN, in	)	case
his official capacity as Texas	)	
Secretary of State; and STEVE	)	
McCRAW, in his official capacity	)	
as Director of the Texas	)	
Department of Public Safety,	)	
Defendants.	)	
_____	)	



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ORAL DEPOSITION OF LINDA LYDIA,  
produced as a witness at the instance of the  
Defendants, and duly sworn, was taken in the  
above-styled and numbered cause on June 6, 2014,  
from 8:48 a.m. to 1:11 p.m., before Karen L. D.  
Schoeve, CRR, RDR, in and for the State of Texas,  
reported by machine shorthand, at the law offices  
of Locke Lord, LLP, 2200 Ross Avenue, Suite 2200,  
Dallas, Texas, pursuant to the Federal Rules of  
Civil Procedure and the provisions stated on the  
record or attached hereto.

## P R O C E E D I N G S

LINDA LYDIA,  
having been first duly sworn, testified as  
follows:

## EXAMINATION

BY MR. TATUM:

Q. Good morning.

A. Good morning.

Q. My name is Stephen Tatum. I'm an  
assistant attorney general in the State of Texas,  
and I'm representing the defendants in this  
matter.

This is Case Number 2:13-CV-193 in  
Federal District Court, Southern District of  
Texas, and consolidated cases.

This is the deposition of Linda  
Lydia. It is about 8:48 on June 6th. We're here  
at the offices of Locke Lord in Dallas, Texas.

Ms. Lydia, would you please state  
your full name for the record, please.

A. Linda Darden Lydia.

Q. And, Miss Lydia, where do you reside?

A. I reside at the 1332 Bow Creek Drive,  
Duncanville, Texas 75116.

1 Q. Do you feel like you were prepared to  
2 testify about the factual bases of the claims  
3 stated in this complaint?

4 A. For the most part.

5 Q. For the most part. Okay.

6 (Discussion off the record.)

7 Q. (BY MR. TATUM) And, Ms. Lydia, you  
8 mentioned your employment in the real estate  
9 industry.

10 A. Yes, sir.

11 Q. Are you also employed by the Texas  
12 NAACP?

13 A. No, I'm not.

14 Q. What is your involvement with the Texas  
15 NAACP?

16 A. I'm an elected officer of the Texas  
17 NAACP.

18 Q. And as an elected officer, do you have  
19 an official title?

20 A. Yes, I do.

21 Q. And what is that?

22 A. Secretary.

23 Q. And when were you elected to that  
24 position?

25 A. Gosh, probably about eight years ago --



1 today?

2 A. Yes, sir.

3 Q. Miss Lydia, do you vote?

4 A. Yes, I do.

5 Q. When was the last time that you voted?

6 A. In the last election we had about two  
7 weeks ago.

8 Q. Miss Lydia, have you ever been unable  
9 to vote because of the requirements of SB 14?

10 A. No.

11 Q. Have you ever been unable to vote for  
12 any other reason?

13 A. No.

14 Q. Miss Lydia, why do you choose to vote?

15 A. It is an absolute right that we have  
16 earned and very hard-fought earned. So I feel a  
17 strong sense of responsibility to vote for those  
18 people who did make those valiant efforts to open  
19 those doors for us to vote. Because for many  
20 years we were denied the right to vote.

21 Q. Miss Lydia, why did the Texas NAACP  
22 join this lawsuit?

23 A. Because of the impact it will have on  
24 minorities.

25 Q. And what is that impact?

1           A.    That impact is the burden of acquiring  
2   an additional piece of identification when we  
3   were operating with a voter's registration card.  
4   And I guess in most states they still will  
5   operate with a voter registration card, as the  
6   only piece of identification needed to vote.

7           Q.    Miss Lydia, are you aware that the  
8   United States is a party to this lawsuit  
9   represented by the Department of Justice?

10          A.    Yes.

11          Q.    Is it the position of the Texas NAACP  
12   that the United States does not adequately  
13   represent its interest in this lawsuit?

14                   MS. RUDD:  Objection --

15          A.    I really couldn't --

16                   MS. RUDD:  Sorry.  Objection calls  
17   for a legal conclusion.  You can answer.

18          A.    I really couldn't answer that question.

19          Q.    (BY MR. TATUM)  Miss Lydia, in joining  
20   this lawsuit, is the Texas NAACP representing the  
21   rights of itself as an organization?

22          A.    Its rights as an organization for its  
23   members, yes.

24          Q.    So it's representing the rights of the  
25   members of the local branches?

1 its permissible authority?

2 A. Not knowing exactly what is permissible  
3 and not permissible, but I know that there were  
4 some changes that were put in place that would  
5 absolutely guarantee the passage.

6 Q. Does the Texas NAACP contend that those  
7 changes were -- or does the Texas NAACP contend  
8 that the legislature was not authorized to make  
9 those changes?

10 A. No, I don't think that that is the  
11 contention.

12 Q. Do you recall -- outside of SB 14, do  
13 you recall any other bill for which similar  
14 changes were made by the legislature?

15 A. Not to my knowledge.

16 Q. Did the Texas NAACP have the  
17 opportunity to voice its concerns with SB 14 to  
18 the legislature during that legislative session  
19 and --

20 A. I do --

21 Q. Sorry. And I'm referring to the 2011  
22 legislature.

23 A. I would venture to say that we only had  
24 maybe one or two people who actually had an  
25 opportunity to speak opposing or even providing

1 recommendations that could perhaps be used to  
2 amend the scope of this bill. I know there were  
3 other people who were interested in speaking, but  
4 due to time constraints, it didn't happen.

5 **Q. Does the Texas NAACP feel that its**  
6 **voice was not adequately heard concerning SB 14?**

7 A. I think the better answer would be,  
8 your question, do we feel that our  
9 recommendations were not listened to?

10 **Q. Did you have ample opportunity to**  
11 **present your recommendations?**

12 A. You know, that takes us down a long  
13 road when you ask that question, because like  
14 myself, I am a volunteer. I am losing income as  
15 I sit here today. And all of our people who are  
16 in our units, whether they're branch presidents  
17 or whatever capacity they may hold, they are all  
18 volunteers. And so the process of supporting  
19 yourself and your family does not always allow  
20 you the leisure of going to Austin and waiting  
21 for days, perhaps, to voice your concern.

22 We have, you know, obviously tried  
23 to assist people in getting to Austin to provide  
24 testimony and we have been successful in some --  
25 with some -- the process of getting them there

1 A. Okay.

2 Q. Does the Texas NAACP engage in any  
3 activities related to voter registration?

4 A. Definitely.

5 Q. And what activities are those?

6 A. We conduct voter registration drives.  
7 We have a complete voter empowerment initiative  
8 that includes voter registration, education,  
9 mobilization and voter protection. Those are the  
10 four components and this is something that we  
11 have had to really work a lot harder at, so to  
12 speak, because of the changes in the law  
13 regarding voting with the voter ID bill.

14 We had to ensure that people were,  
15 one, aware that this had taken place, and we  
16 wanted our units to please educate their  
17 communities that this bill had become law, and  
18 that there were certain things that must be done  
19 that were different from what we had done  
20 previously in order for people to vote.

21 Q. Specifically with regard to voter  
22 registration --

23 A. Um-hum.

24 Q. -- in what way did SB 14 change the  
25 activities of the Texas NAACP?



1           A.    That not only were you getting someone  
2 to fill out a voter registration card, you were  
3 also giving them information about SB 4 -- 14  
4 telling them, you know, that you need to make  
5 certain that the name on this voter registration  
6 card that you're filling out matches the name  
7 that's on your pictured ID identically, otherwise  
8 you may be denied the right to vote, so there was  
9 a lot more -- education normally came after the  
10 registration project. Notice I said voter  
11 registration, voter education, these are  
12 compartmentalized.

13           Q.    Um-hum.

14           A.    But voter registration and education  
15 became one at this point because of the nature of  
16 SB 14.

17           Q.    So --

18           A.    I'm sorry. In the new law.

19           Q.    So previously there was a -- there was  
20 one compartment within the organization of the  
21 Texas NAACP for voter registration purposes?

22           A.    Um-hum.

23           Q.    There was a separate compartment for  
24 voter education purposes; is that correct?

25           A.    Yes, sir.

1           **Q.**    Okay.  And when you say -- when you're  
2 talking about how it was previously just voter  
3 registration and now it's voter registration  
4 education --

5           A.    Um-hum.

6           **Q.**    -- what additional resources are  
7 committed to the new compartment described as  
8 voter registration education?

9           A.    We had to provide printed material  
10 about the changes.  It's -- and obviously we were  
11 instructing people, you know, that when you fill  
12 out your voter registration card, make sure you  
13 pull out your pictured ID that you're going to be  
14 using, if you have one, that it matches that card  
15 because of the discretionary power that a -- that  
16 an election official has when it comes time to  
17 vote.

18                       If it does not match exactly, they  
19 can decide that you're not the person that you  
20 say you are or that your identifications, one or  
21 the other, does not say -- says you are and you  
22 could possibly be disqualified or be given a  
23 provisional ballot which may or may not count,  
24 depending on your actions later.

25           **Q.**    Are the resources that are dedicated to

1 have been added to the pot, so to speak.

2 Q. How has the Texas NAACP -- in the past,  
3 prior to SB 14, how has the Texas NAACP allocated  
4 resources to educate its members regarding other  
5 changes to voter laws?

6 A. We've created postcards about when the  
7 State enacted re-enfranchisement for felons who  
8 were off paper. That was a piece that we would  
9 hand out with voter registration cards to let  
10 people know if they or family members were off  
11 paper, no longer reporting to a probation or  
12 parole officer, that they were now entitled to  
13 vote again, so we created documents for that.

14 Q. So -- sorry.

15 A. That's okay. Go ahead.

16 Q. So did that process involve allocating  
17 resources for making printouts and handouts and  
18 fliers?

19 A. Yeah. We had -- we had a card, I just  
20 told you. We created a card with another group  
21 --

22 Q. Um-hum.

23 A. -- that we handed out with voter  
24 registration cards just so that people were aware  
25 of the law. Anytime you have any legislative

1 changes we try to educate our community about  
2 those legislative changes.

3 **Q. And so the education of your members**  
4 **regarding SB 14 is not the first time you've had**  
5 **to educate your members regarding a change in**  
6 **voter laws; is that correct?**

7 **A. No. But this is the most extensive**  
8 **change we've ever had to make.**

9 **Q. And other than the printouts and the**  
10 **new compartment that you already mentioned, in**  
11 **what ways has the education of your members**  
12 **regarding SB 14 been more extensive than with**  
13 **previous changes in the law?**

14 **A. We have obviously been involved in this**  
15 **litigation now for -- this was filed in, what,**  
16 **2013, and during the legislative session, again**  
17 **we were very actively involved in lobbying and**  
18 **advocating against this bill. We have had to**  
19 **do -- we have developed resources that we have**  
20 **provided to our branches to hand out to people**  
21 **during the registration process. We've had to**  
22 **create information on where you can go and when**  
23 **you can go and where the closest DPS office is,**  
24 **the hours the DPS offices are open.**

25 **There is a whole plethora of things**

1 that have come about as a result of this bill  
2 that we've never encountered on such a lengthy --  
3 for such a lengthy period of time, because the  
4 learning curve is still going on. We still have  
5 people who show up to vote who do not realize  
6 that they need these documents. Students don't  
7 understand why a state-issued student ID is not  
8 sufficive [sic] to vote when it's initiated by  
9 the State as well.

10 Q. And so are these resources you're  
11 allocating towards SB 14-related issues, that  
12 includes resources dedicated to the ongoing  
13 litigation of this lawsuit, correct?

14 A. Yes.

15 Q. Going back to you were talking about --  
16 talking about funds, financial resources of the  
17 Texas NAACP, and you mentioned -- and correct me  
18 if I'm misstating any of this -- you mentioned  
19 funds that are kind of set at the beginning of  
20 the year that you don't touch. Have -- because  
21 of SB 14, have you had to -- for lack of a better  
22 word -- eat into any of those fund allocations?

23 A. No.

24 Q. Can you tell me what activities,  
25 outreach activities, programming activities, any



1 kind of activity of the NAA- -- of the Texas  
2 NAACP that it has -- that it usually conducts in  
3 any given year. Can you give me examples of such  
4 activities that have been allocated less  
5 resources as a direct result of SB 14?

6 A. The utilization of Yannis Banks, our  
7 one staff person, that has almost been -- I would  
8 say he's gone from being in a position that was  
9 60 percent administrative and he's now doing  
10 probably 80 percent legislative as a result of  
11 this bill.

12 Q. He was doing 60 percent administrative?

13 A. Um-hum. But he's no longer doing that  
14 because he doesn't have the time.

15 Q. Could the Texas NAACP hire someone else  
16 to make up for that lost time?

17 A. No. We can't afford that. Our pockets  
18 are not that deep.

19 Q. Okay. You mentioned voter ID  
20 education --

21 A. Um-hum.

22 Q. -- how long has the Texas NAACP been  
23 educating its members regarding voter  
24 requirements -- regarding voter laws in general?

25 A. Since its inception.

1 volunteer.

2 Q. As part of the assistance that Texas  
3 NAACP provides to voters, does that include  
4 helping voters gather the necessary documentation  
5 to vote?

6 A. Some of our units may have. I'm not --  
7 I'm not personally familiar with anyone who has  
8 one of the units that has done something like  
9 that. I'm not really for sure. But I know we  
10 have encouraged them to assist their constituents  
11 to -- to get the materials needed -- the  
12 documents needed, whether it's a driver's license  
13 or whether it's their birth certificate.

14 Q. In the election cycles that have  
15 occurred after the implementation of SB 14 --

16 A. Um-hum.

17 Q. -- has Texas NAACP assisted voters  
18 during those elections in the manner that you've  
19 just described?

20 A. I'm sure we have.

21 Q. Did those activities require more or  
22 less resources than for previous elections prior  
23 to SB 14?

24 A. Definitely more.

25 Q. In what way?

1 A. You have to have a -- you have to have  
2 a birth certificate to get a driver's license.  
3 You have to have a birth certificate to get an  
4 EIC. I mean, those are all needed to move  
5 forward in the process of getting identification.

6 Q. But in the Texas NAACP's activities  
7 related to assisting voters --

8 A. Um-hum.

9 Q. -- to vote --

10 A. Okay.

11 Q. -- have they expended more or less  
12 resources for those activities as a result of SB  
13 14?

14 A. More.

15 Q. In what way?

16 A. Resources getting people to and from  
17 sites, I'm sure were expended by some of our  
18 units, where they need to get to DPS offices.  
19 We've had Yannis who has been working exclusively  
20 on this effort. That has definitely increased  
21 our expenditure. Printing of material,  
22 informational events to educate the community.  
23 What else? Just a number of different  
24 activities. Example that comes to mind, I know  
25 some of the units who usually just do membership

1 recruitment, now as part of their membership  
2 recruitment events, they do provide information,  
3 and they always have the registration cards, but  
4 they now also have to provide -- they provide  
5 information about SB 14 and the requirements of  
6 that as a prerequisite to vote.

7 **Q. Has the Texas NAACP in any way been**  
8 **unable to fulfill its stated mission as a result**  
9 **of SB 14?**

10 A. No. I'd like to think that we're still  
11 carrying out the mission of the NAACP. Maybe not  
12 to the extent that we have done previously  
13 because of the allocations of whether it's  
14 manpower or dollars to this particular effort.

15 I think we could have done more  
16 with -- this is just my personal leaning now. I  
17 think we could have done more with resources to  
18 give to students for scholarships, as we have  
19 done in the past, and other youth-related  
20 activities.

21 **Q. Are resources dedicated to scholarships**  
22 **and youth-related activities, are those allocated**  
23 **on an as-needed basis?**

24 A. Well, they were part of our  
25 programmatic efforts. We felt they were

1 want you to give an honest answer.

2 A. Well, obviously the card has to be  
3 filled out by someone in order for it to be  
4 processed by the election department within the  
5 respective county.

6 So there is some time, but the time  
7 involved in that is so minimal. We're talking  
8 name, address, date of birth, the last four of a  
9 social or a driver's license, and you sign it.  
10 It does not require production of a -- any type  
11 of documentation to prove who you are.

12 Q. Ms. Lydia, why does the Texas NAACP  
13 feel it necessary to devote time and resources  
14 towards voter registration activities?

15 A. Because it -- because this is a right  
16 of citizenship in this country, the right to  
17 vote. And especially it has been hard fought by  
18 African-Americans. The time was we had poll  
19 taxes as a form of disenfranchising. "How many  
20 bubbles in a bar of soap" kind of lunacy testing.

21 So, yeah, there is a long and  
22 egregious history of African-Americans and other  
23 minorities being disenfranchised in this country.

24 And maybe I'm a little bit outraged  
25 that I even have to answer that question because



1 it's so blatantly obviously.

2 Q. Ms. Lydia, to be clear, I am not  
3 questioning whether someone should have the right  
4 to register to vote.

5 A. Okay. Understood.

6 Q. Okay. I don't want to come across  
7 as --

8 A. I gotcha.

9 Q. -- as questioning that right.

10 A. Okay. Thank you.

11 Q. What I'm wondering is if there are so  
12 minimal costs to getting a voter registration  
13 card --

14 A. Um-hum.

15 Q. -- why does the Texas NAACP devote so  
16 many resources towards helping people get  
17 registered?

18 A. Because it's part of our mission.

19 Q. And is it still able to fulfill that  
20 part of its mission since the enactment of SB 14?

21 A. Yes, with added -- with an added  
22 burden.

23 Q. And with regard to getting a voter  
24 registration card, what is that added burden?

25 A. We have to educate them about what they